

THE WORLD OF MARSILIUS OF PADUA



EDITED BY
GERSON MORENO-RIAÑO
BREPOLS

THE WORLD OF MARSILIUS OF PADUA

DISPUTATIO

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VOLUME 5

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Para mi amor verdadero,
Ellen
y para la próxima generación,
Isaac — Victoria
Abraham — Emma — Abigail

amor gignit amorem

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GERSON MORENO-RIAÑO
Regent University

ABBREVIATIONS

This list contains some of the key works referred to and most often used in this volume. The first references in each essay to any of Marsilius's works or translations of his work include a full citation. References thereafter list the appropriate abbreviation of the work followed by discourse, chapter, and/or section numbers. Full citations of the works listed here also appear in the Bibliography.

<i>DM</i>	<i>Defensor minor and De translatione Imperii</i> (Nederman English translation)
<i>OM</i>	<i>Oeuvres mineures</i> (Latin-French Colette and Quillet translation)
<i>DPa</i>	<i>Defensor pacis</i> (Gewirth translation, 1956)
<i>DPb</i>	<i>Defensor pacis</i> (Scholz Critical Edition)
<i>DPc</i>	<i>Defensor pacis</i> (Gewirth translation, with a new afterword, 2001)
<i>CC</i>	<i>Community and Consent</i> (Nederman)
<i>LNEL</i>	<i>La naissance de l'esprit laïque au déclin du moyen âge</i> (de Lagarde)
<i>LPP</i>	<i>La philosophie politique de Marsile de Padoue</i> (Quillet)
<i>MPMPP</i>	<i>Marsilius of Padua and Medieval Political Philosophy</i> (Gewirth)

THE WORLD OF MARSILIUS OF PADUA: AN INTRODUCTION

Gerson Moreno-Riaño

Few are the facts regarding the life of Marsiglio dei Mainardini, commonly known by the latinized version of his name Marsilius of Padua or the non-latinized Marsiglio of Padua.¹ Yet the paucity of biographical facts has not thwarted the serious academic debates regarding Marsilius's place in the history of political thought and ideas. He is one of the few thinkers who has been both heralded as a prophet and dismissed as a 'crackpot' or 'heretic'.² His

¹ Some of the earlier accounts of Marsilius's life can be found in: Noël Valois, 'Jean de Jandun et Marsile de Padoue, auteurs du *Defensor pacis*', *Histoire littéraire de la France*, 33 (1906), 528–623; Charles K. Brampton, 'Marsiglio of Padua, Life', *English Historical Review*, 37 (1922), 501–15; Felice Battaglia, *Marsilio da Padova e la filosofia politica del medioevo*, (Florence: Felice le Monnier Editore, 1928); Georges de Lagarde, *La naissance de l'esprit laïque au déclin du moyen âge*, 11: *Marsile de Padoue le premier théoricien de l'État laïque* (Paris: Press Universitaires, 1948) (hereafter, citations of this text appear as *LNEL*); and Alan Gewirth, *Marsilius of Padua and Medieval Political Philosophy* (New York: Columbia University Press, 1951) (hereafter, citations of this text appear as *MPMPP*). The standard and most respected bibliographic account appears in Carlo Pincin, *Marsilio* (Turin: Edizioni Giappichelli, 1967). More contemporary accounts of varying length can be found in: Jeannine Quillet, *La philosophie politique de Marsile de Padoue* (Paris: Vrin, 1970); Carlo Dolcini, *Introduzione a Marsilio da Padova* (Rome: Editori Laterza, 1995); Cary Nederman, *Community and Consent: The Secular Political Theory of Marsiglio of Padua's Defensor Pacis* (Lanham, MD: Rowman and Littlefield, 1995) (hereafter cited as *CC*); and Janet Coleman, *A History of Political Thought: From the Middle Ages to the Renaissance* (London: Blackwell Publishers, 2000).

² Consider what one recent author writes: 'Al nome di Marsilio, *homo magis aristotelicus quam christianus*, è usualmente associate una discontinuità catastrofica dentro la filosofia politica.' See Maurizio Merlo, *Marsilio Da Padova: Il pensiero della politica come grammatica del mutamento* (Milan: FrancoAngeli, 2003). Nederman makes the point that prior to Gewirth's

Defensor pacis has been interpreted as a profound and original medieval text as well as a precursor of modernity, the secular state, totalitarianism, and even aspects of Marxism.³ Others see nothing original in the work and suggest it is no more than a polemic deserving little or no place as a work of serious political theory.⁴ Perhaps of more significance in ascertaining the importance of Marsilius's thought is the tremendous bibliography his work has engendered.⁵ Besides the various editions and translations of his writings, there are dozens upon dozens of scholarly treatments of his political doctrines, ecclesiology, legal theory, and sources and influences. If one relied solely on this as evidence of his importance, one could draw a safe conclusion that Marsilius was one of the most important thinkers of the late Middle Ages.

This volume contributes to the growing body of literature on Marsilius by compiling some of the latest research and new interpretations of the Italian political theorist. It also represents the first international collaborative enterprise of Marsilian scholars in the twenty-first century drawing from both junior and senior scholars in a variety of disciplines.⁶ Many of these scholars met at Leeds, England, in July 2003 for several days to discuss a wide array of themes related to Marsilius's life and work.⁷ The conversations of these days were tremendously fruitful and engaged some difficult questions of interpretation as well as new themes and areas

1956 English translation of *Defensor pacis*, 'Marsilius had been largely dismissed as a crackpot, a heretic, or an anomaly — in all cases, someone whose thought was entirely out of step with his time.' See Cary J. Nederman, 'Afterword', in Marsilius of Padua, *Defensor Pacis*, trans. by Alan Gewirth, with a new Afterword and Bibliography by C. Nederman (New York: Columbia University Press, 2001).

³ See *MPMPP*, pp. 3–7, as an example of the variety of interpretational strategies.

⁴ *MPMPP*, pp. 5–6. Refer as well to Conal Condren, 'Marsilius of Padua's Argument from Authority: A Study of Its Significance in the *Defensor pacis*', *Political Theory*, 5 (1977), 205–18.

⁵ For extensive bibliographies see *LNEL*, Dolcini, and Nederman, 'Afterword'.

⁶ Two similar gatherings took place in the twentieth century. The first celebrating the life and thought of Marsilius occurred on 18–20 September, 1978. The journal *Medioevo* contained the proceedings of that gathering. See *Medioevo*, 5 (1979) and 6 (1980), as well as *Medioevo*, 5, pp. xi and 1–3, for the background to the conference. Another similar meeting was organized by Gregorio Piaia and its proceedings were published in *Studia Patavina*, 27 (1980), 259–363. An earlier collaboration, though not necessarily meeting, can be found in *Marsiglio da Padova: Studi raccolti nel VI centenario della morte*, ed. by Checchini and Bobbio (Padua: CEDAM, 1942).

⁷ This meeting, known as the 2003 Marsilius of Padua World Congress, met under the auspices of the 2003 International Medieval Congress, International Medieval Institute, University of Leeds, England.

of investigation. Some of these new frontiers are explored in the essays contained within this volume and serve as the opening salvo of future academic discussion and scholarship. But other questions and conclusions arose which while addressed implicitly in this volume merit a more explicit although brief exposition. One of these regards the fact that the complexity of Marsilius's writings and arguments suggest the need for an interdisciplinary evaluation and interpretation of his work. Marsilius ably 'dips into' various academic fields from history to theology, from medicine to philosophy. And the various intellectual advances and climates of opinion present during the thirteenth and fourteenth century most probably affected his thinking. A comprehensive and sound interpretation of Marsilius's work, then, necessitates a holistic evaluation of all the influences upon his writings and thought.

The interdisciplinary discussions that took place while at Leeds also resulted in the significant conclusion that, while Marsilius may have had practical and very real political aspirations, Marsilius did craft and advance a very real theory of politics. This is not to say that scholars at Leeds agreed on the substantive import of this theory (for example, consider the work of Cary J. Nederman and the essays by Nederman, Canning, and Moreno-Riaño in this volume). But Marsilius does employ a unique methodology and persuasive strategy, as well as certain foundational premises that allow him to propose a distinct and unique approach to politics (e.g., see the essays by Hamilton-Bleakley, Cesar, and Sweeney in this volume) and which serve as an antidote to interpretations suggesting that his work is theoretically vacuous and only polemical in nature.

Another issue that merits attention is relating Marsilius's contributions to a wider academic audience. While Marsilius is well known within discussions of political theory and intellectual history, he is still not a well-known figure to the wider academic public. This volume advances our knowledge of this important thinker and, due to its interdisciplinary nature, is an initial and important step in introducing him to a broader academic readership. But in this endeavour, only the surface has been scratched.⁸ Much more can still be done to introduce and defend as relevant the ideas proposed in the deeply nuanced and complex political theory of Marsilius. One possible and fruitful approach would be to trace the influence which Marsilius's work had on the political theories and

⁸ Some scholars have addressed this problem. The work of Cary J. Nederman, Joseph Canning, Paul Sigmund, Anthony Black, and Brian Tierney, for example, seek to situate Marsilius as an important figure within intellectual and political history, one which influenced future discussions on such issues as rights, law, and the nature of the political community.

theorists of subsequent centuries and social movements (e.g., see Koch's essay). Scholars could undertake examinations of the influence of Marsilius upon papal political theories and theology as well as his influence, if any, upon various important political movements such as the Reformation and the French Revolution. A recent and very promising approach is to situate and investigate Marsilius's work within a comparative cross-cultural context that seeks to illustrate the contextual differences and similarities of how theorists across geographical and cultural lines addressed and theorized about the problems of politics.⁹

This present volume makes significant headway in the above areas of investigation. The contributors represent various areas of academic expertise and are very sensitive to the complex nature of Marsilius's work and times. While many of the papers explore new areas and ask innovative questions, they do so in a responsive manner to the important contributions which other disciplines and areas of expertise can offer to our understanding of Marsilius's thought. Each essay is also a powerful answer to and deterrent against the position that Marsilius's work is atheoretical and purely polemical. There is no doubt that Marsilius employed some polemic strategy. But as each essay attests from a variety of vantage points, Marsilius carefully crafted a perspective of politics, one which the papacy and its defenders seriously considered as a legitimate 'theory' of politics, albeit a dangerous and morally bankrupt one. Relating Marsilius to a wider scholarly audience is also addressed in this present volume. While only one contribution explicitly attempts to address the question of influence (i.e., Koch's contribution), all of the essays expand the fields of inquiry so as to invite new questions and answers from a larger intellectual milieu.

Having said this, it is important to address briefly the structure of the volume. Aside from this short introduction and the first essay, the volume contains three main sections (in consciousness that overlappings are manifold): 'Historical Background', 'Methods and Sources', and 'Theoretical Premises'. Prior to the first section and in order to familiarize us with the field of Marsilian studies, the volume begins with Cary J. Nederman's essay 'Marsiglio of Padua Studies Today — And Tomorrow', a stimulating *tour de force* surveying some of the history of Marsilian scholarship and introducing readers to current exciting new venues of investigation as well as suggesting new groundbreaking

⁹ For a very important example of this type of scholarship see Takashi Shogimen, 'Marsilius of Padua and Ogyu Sorai: Community and Language in the Political Discourse in Late Medieval Europe and Tokugawa Japan', *Review of Politics*, 64.3 (2002), 497–524.

paths for tomorrow. Both in his essay in this volume as well as in other work, Nederman forcefully defends the view that Marsilius's writings not only advance a very distinct theoretical outlook for politics, but also are relevant for contemporary discussions of tolerance, civic republicanism, and individualism. For Nederman, if Marsilius employs polemics, he does so only for the sake of advancing his secular political theory.

Following Nederman's essay, the section entitled 'Historical Background' investigates some of the political and ecclesiastical events surrounding Marsilius's life after the publication of *Defensor pacis*. The papers address *inter alia* the extent of Marsilius's political involvement with Louis IV of Bavaria (Frank Godthardt) as well as the papal reactions to the *Defensor pacis* (Thomas Turley) and an appraisal of the entire question of Franciscan poverty which so dominates Discourse II of *Defensor pacis* (Gabrielle Sutherland). Within Godthardt's treatment of various important biographical details of Marsilius's life lies an original and, to some, a discomfiting thesis, namely, that Marsilius did not 'flee' to the Bavarian court as so many scholars suggest. Rather, Godthardt defends the position that Marsilius travelled to Louis's court of his own accord and for personal political ambitions. Beyond theoretical concerns, so Godthardt argues, Marsilius was also a man of politics. Turley's essay is concerned with Marsilius's ecclesiopolitical theory and the pro-papal reactions it engendered. In particular, Turley reconsiders Richard Scholz's view that these papalist reactions were generally 'unremarkable'. Turley's conclusion is quite the opposite. A careful analysis of pro-papal responses suggests that papal defenders went beyond simply articulating traditional papal arguments to a serious consideration of and response to Marsilius's attack on Church tradition and doctrine. Gonzales closes Section I with a reappraisal of the relationship between the Franciscan poverty texts and the *Defensor pacis* suggesting that Marsilius's arguments, particularly those found in Discourse II, 'changed the course of the debate' by giving Franciscans 'new' tools with which to wage their battle against the papacy.

The following section, 'Methods and Sources', deals with some of the intellectual roots and methodological premises that influenced Marsilius's writings. Herein, several important topics are addressed: the linguistic and conceptual difficulties encountered in translating *Defensor pacis* (Annabel Brett), the use of authorities as an argumentative tool (Floriano Jonas Cesar), Marsilius's concept of rationality and prudence as related to his view of natural law (Holly Hamilton-Bleakley), Marsilius's understanding of grace and its use in his political theory (Michael Sweeney), and, finally, the influence that Aristotle and medieval conceptions of medicine exerted on Marsilius (Alexander Aichele). Brett's essay

offers readers an insightful and challenging analysis of not only the complexities of translating in general but, in particular, of translating a text like *Defensor pacis*. Brett suggests that the translator's work in rendering the *Defensor pacis* accessible to various audiences as well as faithful to the original is a difficult task due to two factors. First, translation involves the translator deciding upon a 'semiotic strategy' for the text. And, most importantly, Brett suggests that what makes translating the *Defensor pacis* so difficult is the fact that it itself is an attempt to intervene and bring clarity to the political discourse of that time period — discourse which was not atemporal but highly politicized and historically determined.

Brett's essay serves to provide a foundation for the remaining essays of this section. Cesar, Hamilton-Bleakley, Sweeney, and Aichele all investigate the role of some integral concepts, intellectual authorities, and argumentative methods within Marsilius's writings. Cesar investigates how Marsilius's conception of truth and certainty serves to ground the use of both divine and secular authorities, a conception which allowed Marsilius to discredit the authority of papal decrees as well as the papal arguments based on metaphorical readings of Scripture. Hamilton-Bleakley's essay considers one of the most contentious issues in Marsilian scholarship, namely, the entire question of the nature of law in Marsilius's works. Hamilton-Bleakley undertakes this thorny question through an investigation of whether or not Marsilius's political theory advances a theory of natural law. While the author herself is not willing to assert a definitive answer to such a query, she strongly suggests that Marsilius's method of argumentation is scientific and thus strongly reminiscent of natural law theories in ethics. Sweeney presents readers with a fascinating examination into a possible Marsilian doctrine of grace. For Marsilius, Sweeney suggests, it is a misunderstanding of the law of grace that has led to the historical situation which Marsilius decries in the opening pages of *Defensor pacis*. Marsilius's account seeks to clarify the nature of grace and in doing so results in an explicit rejection of certain revered Church authorities as well as a substitution of these for the more foundational authority of Christ's words in the Gospels as well as the primitive church. Aichele closes this section of the book with an inquiry into the role of medicine for Marsilius's political theory. Aichele's and Cesar's papers complement each other since both address the issue of medicine in Marsilius's writings. Aichele's treatment is more extensive, focusing on Marsilius's use of the analogy between organism and state with an attempt to make sense of some incoherencies of Marsilius's account through an understanding not only of Aristotelian ontology but also of various medieval medical teachings.

The final section, ‘Theoretical Premises’, perhaps contains the most overlap. Bettina Koch opens this section with an investigation into the similarities between Marsilius and Thomas Hobbes on the issues of religion and papal power. But Koch is interested in a more penetrating thesis than just a resemblance of political doctrines. The aim of the essay is to use the thinkers’ views on religion to re-analyse the continuity between the late medieval and early modern periods. The theme of power is continued in Joseph Canning’s paper on the role of power and powerlessness in Marsilius’s work. Canning argues that Marsilius’s primary concern is for the correct location and employment of power in the political community and, therefore, only an analysis that underscores the centrality of power in the Italian’s writings can offer ‘a more accurate understanding’ of his concerns. Canning’s thesis privileges the role of power over that of popular sovereignty or consent within the *Defensor pacis*, a position which Cary J. Nederman has defended and which Vasileios Syros investigates in his essay. Syros’s particular concern is to explore the reception of Aristotle’s doctrine of the ‘sovereignty of the multitude’ in the works of various medieval thinkers — in particular, Marsilius of Padua, Peter of Auvergne, and Nicolas de Vaudémont. Syros suggests that while the doctrine of popular sovereignty has a prominent place in Marsilius’s work, Marsilius’s interpretation of the doctrine constitutes a significant break from the tradition of ‘political Aristotelianism’ due not only to the politics of his time but also to his peculiar use of the doctrine. My own essay closes this section with an analysis of various interpretative schools regarding the primacy of certain Marsilian political doctrines. In particular, I propose a possible *via media* between the polar perspectives of power (i.e., Canning) and consent (i.e., Nederman) through the suggestion that nowhere in the *Defensor pacis* does Marsilius prefer one of his accepted doctrines over another.

The contributions to this volume cover a variety of questions and offer new and fresh insights into the life, work, and world of Marsilius of Padua. However, this is only the beginning. As Cary J. Nederman suggests in his opening essay, there are still many fruitful research directions that have yet to be taken in the field of Marsilian studies. Therefore, in this endeavour, as in many other scholarly works, only the surface has been scratched of a deeply nuanced and complex political theorist and historical time. But if this work serves as an impetus for further exploration into the life and career of Marsilius of Padua, then it has already commenced its journey toward success.

State of Scholarship

MARSIGLIO OF PADUA STUDIES TODAY — AND TOMORROW

Cary J. Nederman

Twenty-five years ago, a large group of esteemed scholars gathered at Padua for three days (18–20 September 1980) to celebrate the life and thought of Marsiglio dei Mainardini, better known as Marsilius of Padua. The two volumes of the journal *Medioevo* containing the proceedings of that conference constitute a virtual *summa* of the state of scholarship on Marsiglio as it had evolved to that time.¹ Many of the contributors had participated in the vast renaissance in Marsiglian studies during the 1950s, 1960s, and 1970s.² Interestingly, the conference also marked a kind of watershed. A significant number of the most noted attendees were to publish little or nothing about Marsiglio after 1980. Thus, the Padua congress might have signalled the exhaustion of interest in the ideas of Marsiglio.

In fact, however, the contrary has proven true. The intervening decades have witnessed the emergence of a new crop of scholars — some older, others near the beginning of their careers — who have taken up Marsiglio's mantle and pursued innovative paths into the Paduan's life and writings. The literature that the current generation has produced (and promises to produce) properly inspires astonishment at its range and quality, a reaction that will doubtless be felt repeatedly by those who read the contributions to the present volume. Hence, the propedeutical task that I propose to undertake — to construct a bridge by

¹ *Medioevo*, 5 (1979) and 6 (1980); see *Medioevo*, 5, pp. xi, and 1–3 for the background to the conference. The proceedings of another symposium honouring Marsiglio, organized by Gregorio Piaia, were published in *Studia Patavina*, 27 (1980), 259–363.

² For a look back at this renaissance, in a spirit similar to my own in the present essay, see Jeannine Quillet, 'Nouvelle Études Marsiliennes', *History of Political Thought*, 1 (1980), 391–409.

assessing where Marsiglian studies have travelled since circa 1980 and where they might (or should) head in the foreseeable future — poses a truly daunting prospect. Obviously, no brief survey can reasonably be expected to do justice to the topic, let alone claim to be exhaustive, but I shall endeavour to eschew idiosyncrasy in favour of casting a wide net over the field. (I shall also refrain from saying too much about my own contributions to the subject or my disagreements with fellow scholars — which some may say have been too widely disseminated already.) Fortunately, I have been able to rely for guidance on Carlo Dolcini's excellent little 1995 handbook, *Introduzione a Marsilio da Padova*, which contains a detailed historical-bibliographical overview of the critical literature on Marsiglio.³ In my own survey, I propose for the sake of cogency to arrange the discussion under four main headings: historical context (including biography, sources, and texts); secular doctrines (interpretations of his leading ideas about the nature of temporal, social, and political order, as reflected primarily in Discourse I of the *Defensor pacis*); ecclesiopolitical theories (understandings of his ecclesiology and political theology, along with his religious attitudes); and historical significance (including reception, influence, and comparison). Of course, such a division is necessarily artificial, but it affords us a preliminary way of imposing a modicum of order on more than a quarter-century of scholarship whose breadth as well as sheer quantity might otherwise overwhelm us. In addition to highlighting important contributions in each of these areas of investigation, I shall attempt to identify further topics that have eluded the attention of recent scholars, and thus I shall suggest how future energy might profitably be spent.

Historical Context

One of the great frustrations commonly expressed by students of Marsiglio is how little we know about his life and career, both prior to finishing the *Defensor pacis* in 1324 and during his residence thereafter (until his death in 1342/3) as an exile under the protection of King Louis IV of Bavaria (also known as Ludwig the Bavarian). In many ways, Carlo Pincin's 1967 study, *Marsilio*, remains the best general biographical guide, not least because it includes the texts of numerous important sources for his life.⁴ The best documented of Marsiglio's

³ Carlo Dolcini, *Introduzione a Marsilio da Padova* (Rome: Editori Laterza, 1995), pp. 75–82.

⁴ Carlo Pincin, *Marsilio* (Turin: Edizioni Giappichelli, 1967).

years were the later 1320s, immediately after his arrival (with John of Jandun) at Louis's court. Yet until the very recent work of Frank Godthardt, who has carefully combed the archival sources, even this period was grossly misunderstood. In a series of conference papers, and in his doctoral dissertation in progress, Godthardt demonstrates that many of the oft-repeated 'facts' about Marsiglio's exile with Louis have been grossly distorted.⁵ Thus, there is no evidence that Marsiglio 'fled' to Louis in 1326 for fear of persecution when his authorship of the *Defensor pacis* was 'discovered' — always an implausible claim, since the identity of its author seems transparent from the various self-references that pepper the text. Rather, the documentary evidence suggests a carefully contrived decision on the part of Marsiglio and John to depart, an event that most likely occurred in 1324 or perhaps 1325. Nor was Marsiglio ever appointed 'spiritual vicar' of Rome by Louis during the ultimately disastrous expedition through Italy during 1327/8 that has sometimes been taken as an enterprise conceived and planned by the Paduan. Even after Godthardt's detailed examination of the known evidence, some questions remain, of course, such as the reason for John's decision to accompany Marsiglio to join Louis. Yet Godthardt's research into the aftermath of the completion of the *Defensor pacis*, when it sees the light of print, promises to shed considerable illumination on the vexed relationship between Marsiglio's political theory and political practice.

Considerable attention during the last quarter-century has been devoted to Marsiglio's texts. Translations of the *Defensor pacis* into Spanish (1989), Portuguese (1997), and Italian (2001) were accomplished, as were translations into Portuguese (1991) and English (1993) of the *Defensor minor*, following on the masterful 1979 edition (and French translation) of that treatise (along with the *De translatione Imperii*) by Jeannine Quillet and Colette Judy.⁶ Cambridge

⁵ See Godthardt's 1999 paper presented at the annual Arizona Center for Medieval and Renaissance Studies conference, entitled 'Political Philosophy and Political Practice: Marsilius of Padua and the Emperorship of Ludwig of Barvaria', and his 2002 Leeds conference paper, 'Marsilius of Padua and John of Jandun at the Court of Ludwig the Bavarian: Exile or Destination?'. His University of Hamburg Department of History dissertation, due to be completed by the time the present volume is published, is tentatively titled 'Marsilius von Padua und der Romzug Ludwigs den Bayern: Zum Verhältnis von politischer Theorie und politischem Handeln im späten Mittelalter'.

⁶ See *El Defensor de la Paz*, trans. by L. Martinez Gomez (Madrid: Tecnos, 1989); *O Defensor da paz*, trans. by José Antônio Camargo Rodrigues de Souza (Petrópolis: Vozes, 1997); *Il difensore della pace*, trans. by Mario Conetti, Claudio Fiocchi, Stefano Radice, and Stefan Simonetta (Milan: Bur/Rizzoli, 2001); Marsile de Padoue, *Oeuvres mineures*, trans. by Colette

University Press has just published Annabel Brett's new English version of the *Defensor pacis* that will replace the serviceable but too often flawed Gewirth translation that celebrates its fiftieth anniversary in print. Let me point out, in passing, that while I have always had serious reservations about Gewirth's rendering of Marsiglio's Latin, his achievement in escalating the renaissance of Marsiglian studies during the past half-century cannot be denied.⁷ In any case, translation of Marsiglio into the languages of our unlettered world constitutes an important step forward — and one that should continue with, say, a rendering of the *Defensor minor* and *De translatione Imperii* into German.

Equally necessary is the editing and publication of other works to which Marsiglio's name has been attached. In 1981, Carlo Dolcini produced a version of a 1331 treatise addressed to Louis in which Marsiglio might have had a hand.⁸ It remains surprising, however, that scholars have failed to take up the challenge posed in Quillet's contribution to the 1980 Padua conference to provide a complete edition of Ms. Fies. 161 of the Biblioteca Mediceo Laurenziana, namely, a set of *questiones* on the *Metaphysics* ascribed to Marsiglio. (Note that this statement of 'shock and awe' comes from someone utterly — and conveniently — untutored in palaeography.) The manuscript seems likely to be a genuine work by Marsiglio, written during his Paris years. Small portions of the text have been edited in papers by Quillet and others.⁹ Yet for reasons that will become apparent below, a careful and complete edition of this tract seems capable of unlocking many mysteries of Marsiglio's thought; and there are several publishers who would be prepared, I believe, to release the resulting text. Perhaps less pressing — but necessary nonetheless — is a full edition of a logical

Jeudy and Jeannine Quillet (Paris: Editions CNRS, 1979); idem, *Defensor minor*, ed. by José Antônio Camargo Rodrigues de Souza (Petrópolis: Vozes, 1991); idem, *Defensor minor and De translatione Imperii*, ed. by Cary J. Nederman, trans. by Cary J. Nederman and Fiona Watson (Cambridge: Cambridge University Press, 1993).

⁷ See my 'Afterword' in Marsilius of Padua, *Defensor pacis*, trans. by Alan Gewirth, with a new Afterword and Bibliography by Cary J. Nederman (New York: Columbia University Press, 2001), p. 443.

⁸ *Marsilio e Ockham*, ed. by Carlo Dolcini (Bologna: Istituto di Storia Medievale e Moderna, 1981), pp. 125–36.

⁹ For full bibliographical details, see Dolcini, *Marsilio da Padova*, p. 87.

treatise on sophistics ascribed to Marsiglio, which Roberto Lambertini has already analysed at great length.¹⁰ Moreover, given the fact that Marsiglio at the time he composed the *Defensor pacis* was already a well-established schoolman of some standing, one might reasonably expect that other extant manuscripts will sooner or later turn up that bear the mark of his authorship.

Greater attention to the textual record left by Marsiglio — even works that are not overtly political — promises to be of assistance in untangling the thorny problem of his sources and intellectual debts. At one time, few scholars seemed inclined to dispute seriously the sixteenth-century conclusion of Albertus Pighius that Marsiglio was ‘a man more Aristotelian than Christian’. For a time during the 1970s and 1980s, however, Marsiglio was the object of his own peculiar form of ‘culture war’, with scholars alternately attributing and then denying to him a set of conceptual ascriptions — Augustinian, Franciscan, and Ciceronian as well as Aristotelian.¹¹ In more recent days, cooler heads have largely prevailed, perhaps in recognition of Antony Black’s eminently reasonable suggestion that medieval political theory in general, and Marsiglio in particular, spoke a number of different ‘languages’, each deployed as the rhetorical, polemical, and/or philosophical circumstances demanded.¹² That Marsiglio appears to adopt so many ostensibly distinct intellectual identities is simply a function of his multilingual talents. Yet very recent research suggests that there may be one discourse to which he had access that has not been adequately examined, namely, the language of the Arab philosophers whose works had been extensively disseminated in the Latin West by the early fourteenth century. In his thus-far

¹⁰ Roberto Lambertini, ‘The *Sopismata* Attributed to Marsilius of Padua’, in *Sophisms in Medieval Logic and Grammar*, ed. by Stephen Read (Dordrecht: Kluwer, 1993), pp. 86–102.

¹¹ Daniel G. Mulcahy, ‘The Hands of Augustine, But the Voice of Marsilius’, *Augustiniana*, 21 (1971), 457–66; Conal Condren, ‘On Interpreting Marsilius’s Use of Augustine’, *Augustiniana*, 25 (1975), 217–22; Joanna V. Scott, ‘Influence or Manipulation? The Role of Augustinianism in the *Defensor pacis*’, *Augustinian Studies*, 9 (1978), 59–79; Kerry E. Spiers, ‘The Ecclesiastical Poverty Theory of Marsilius of Padua: Sources and Significance’, *Il pensiero politico*, 10 (1977), 3–21; Conal Condren, ‘Rhetoric, Historiography, and Political Theory: Some Aspects of the Poverty Controversy Reconsidered’, *Journal of Religious History*, 18 (1984), 15–34; Cary J. Nederman, ‘Nature, Justice, and Duty in the *Defensor pacis*: Marsiglio of Padua’s Ciceronian Impulse’, *Political Theory*, 18 (1990), 615–37.

¹² Antony J. Black, ‘Political Languages in Later Medieval Europe’, in *Church and Sovereignty: Essays in Honour of Michael Wilks*, ed. by Diana Wood (Oxford: Blackwell, 1991), pp. 313–28, and idem, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), pp. 7–13.

unpublished work, Black himself has noted a striking similarity between commonplaces of medieval Islamic philosophy concerning the foundations of social order and political community and the views stated in the *Defensor pacis*.¹³ Whether or not Marsiglio was unique in mining this source — and I believe that he was not — it has become important to discover the extent to which he was familiar with Islamic ideas and the channels through which this knowledge was disseminated. For reasons too complicated to explore here, the Marsiglian questions on the *Metaphysics* may provide an important bridge to identifying his link to Islamic thought. Also important will be an understanding of his training as a physician, and the texts — Arabic as well as Greco-Roman — to which he might as a consequence have been exposed. In sum, we may have only scratched the surface in our appreciation of the languages that Marsiglio was capable of speaking and deploying in pursuit of his antipapal political agenda. Clearly, we are dealing with a complicated and overlapping set of discourses whose full comprehension is yet to be realized.

Secular Doctrines

The first discourse of the *Defensor pacis* continues to hold special fascination for modern political theorists and philosophers, perhaps because unlike so many other treatises of the Middle Ages, its doctrines appear to be derived from premises that are largely or wholly naturalistic. In times past, attempts have been made to frame these doctrines in highly modern terms — as ‘democratic’, or ‘liberal’, or even ‘socialist’. By contrast, awareness of the historical possibilities and limitations within Marsiglio’s thought has characterized most scholarly readings during the past few decades. Leaving aside for the moment the fraught question of the relationship between the two main discourses of the work, the general trend of scholarship has favoured the interpretation of Discourse I as primarily a contribution to republican political thought of the variety associated with the Italian urban communes of the *trecento*. Following a general line that had been endorsed in particular by Nicolai Rubinstein and Quentin Skinner,

¹³ Antony J. Black, ‘Arabo-Islamic Political Philosophy in Marsiglio of Padua’, presented to the International Medieval Congress, Leeds, 2002. A large quantity of Arab texts reminiscent of Marsiglian doctrines has been compiled by Professor Patricia Crone of the Institute for Advanced Study in Princeton for a 2003 seminar on ‘The Greek Strand in Islamic Political Thought’, also suggesting support for this argument.

recent commentators have sought to put flesh on the bones of Marsiglian republicanism by examining its philosophical and historical presuppositions.¹⁴ Antony Black, for instance, considers Marsiglio to be steeped in the communal ethos of guild society typical of late medieval Italy, so that the emphasis placed on occupational groups as the hallmark of citizenship and civic participation in the *Defensor pacis* reflects the values embraced by a trade-oriented political system.¹⁵ In a similar vein, P. Renée Baernstein has proposed that Marsiglio's corporate and organic language must be tied to — and is at times circumscribed by — his fundamentally republican values.¹⁶ James Blythe views the theory of the first discourse as a prime illustration of the promotion of the 'mixed constitution' as the best regime, which constitutes a central theme that pervaded medieval political philosophy after the mid-thirteenth-century translation of Aristotle's *Politics* into Latin.¹⁷

Given the renewal of interest among political theorists as well as historians in republicanism as a salient modern value — 'a shared European heritage', in the words of one lately published book — and as an inspiration for communitarian causes, the tendency to locate Marsiglio within a republican tradition also permits readers to set his ideas to work within contemporary argumentation.¹⁸ In other words, a case may be made for the 'relevance' of Marsiglio. Thus, David Carr has found in Marsiglio's theory of law a bridge between the doctrines of 'civic virtue' and 'individualism' that have divided much contemporary political

¹⁴ Nicolai Rubinstein, 'Marsilius of Padua and the Italian Political Thought of His Time', in *Europe in the Late Middle Ages*, ed. by J. L. Hale, J. L. R. Highfield, and B. Smalley (London: Faber and Faber, 1965), pp. 44–75; Nicolai Rubinstein, 'Marsilio da Padua e il Pensiero Politico del Trecento', *Medioevo*, 5 (1979), 143–62; Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols (Cambridge: Cambridge University Press, 1978), 1, 3–65 passim.

¹⁵ Antony J. Black, *Guilds and Civil Society in European Political Thought from the Twelfth Century to the Present* (Ithaca: Cornell University Press, 1984), pp. 86–95. A new edition has recently been published under the title *Guild and State: European Political Thought from the Twelfth Century to the Present* (New Brunswick: Transaction Publishers, 2003).

¹⁶ P. Renée Baernstein, 'Corporatism and Organicism in Discourse 1 of Marsilius of Padua's *Defensor pacis*', *Journal of Medieval and Early Modern Studies*, 26 (1996), 113–38.

¹⁷ James M. Blythe, *Ideal Government and the Mixed Constitution in the Middle Ages* (Princeton: Princeton University Press, 1992), pp. 170–71, 193–202. In Blythe's review of my *CC* in *Speculum*, 71 (1996), 741–43, he seems to retract important elements of this interpretation, however.

¹⁸ *Republicanism: A Shared European Heritage*, ed. by Martin van Gelderen and Quentin Skinner, 2 vols (Cambridge: Cambridge University Press, 2002).

debate — an interpretation of the *Defensor pacis* to which I largely subscribe.¹⁹ It may also be plausibly argued, I believe, that Marsiglian principles yield a coherent, yet decidedly nonliberal, theory of toleration toward religious differences, including heretics as well as non-Christians — in other words, something like a ‘communitarian’ conception of tolerance.²⁰ But perhaps the most intriguing application of Marsiglian ideas comes from an empirical political scientist, Michael Morrell, who has operationalized and tested the account of political participation in Chapters 12 and 13 of Discourse I.²¹ Morrell compared Marsiglio’s version of participation as a two-level phenomenon — that is, the ‘framing’ of laws by a small group of *prudentes*, followed by a process of large-scale consensual discussion of the merit of proposed statutes — with two alternative models, those of direct democracy (proposed by Carol Pateman) and of representative government (as propounded by John Stuart Mill). Morrell discovered that, in test groups, participants were more likely to have enhanced their civic education and to be satisfied with the quality of the ensuing decisions under the Marsiglian system than under either a purely representative or a direct scheme of decision-making. While this hardly proves that Marsiglio was ‘right’ about the nature of participation, it certainly suggests that his teaching possesses merits that have been too-seldom appreciated.

The one major expositor of Marsiglio who will have none of this — neither the republicanism nor the application to modern thought — is Conal Condren. In a provocative series of articles leading up to his 1985 book on *The Status and Appraisal of Classic Texts*, Condren denounced all attempts to identify Marsiglio’s thought with any systematic or cogent philosophical doctrines or principles.²² Briefly stated, Condren’s case runs as follows. Marsiglio’s project in the *Defensor pacis* is fundamentally polemical, namely, a call to action on the part of rulers and cities across Europe in opposition to the temporal pretensions of the papacy.

¹⁹ David Carr, ‘Marsilius of Padua and the Role of Law’, *Italian Quarterly*, 28 (1987), 5–25.

²⁰ Cary J. Nederman, *World of Difference: European Discourses of Toleration, c.1100–c.1550* (University Park: Pennsylvania State University Press, 2000), pp. 69–84.

²¹ Michael E. Morrell, ‘Citizens’ Evaluations of Participatory Democratic Procedures: Normative Theory Meets Empirical Science’, *Political Research Quarterly*, 52 (1999), 293–322.

²² Conal Condren, ‘Marsilius of Padua’s Argument from Authority: A Survey of Its Significance in the *Defensor pacis*’, *Political Theory*, 5 (1977), 205–18; ‘Democracy and the *Defensor pacis*’, *Il pensiero politico*, 13 (1980), 301–16; ‘Marsilius and Machiavelli’, in *Comparing Political Thinkers*, ed. by Ross Fitzgerald (Sydney: Pergamon Press, 1980), pp. 94–115; and *The Status and Appraisal of Classic Texts* (Princeton: Princeton University Press, 1985).

In order to achieve this purely pragmatic end of combating a ‘universal enemy’, Marsiglio employs all the weapons at his disposal — religious as well as philosophical — to build up his case against papal government and to motivate direct action. What appear to be substantive political doctrines in Discourse I are in fact carefully constructed ‘mirrors’ that permit audiences of different kinds to see the reflection of their own particular predicaments. Marsiglio adopts a rhetorical-political strategy that Condren terms ‘elliptical ambiguity’, a ‘one size fits all’ instrument for whipping up a trans-European response to the papal menace. This is why, Condren says, later readers have themselves been tricked into seeing in the words of Discourse I political ideas that Marsiglio himself could not plausibly have maintained. Nor would Condren say that a more historically sensitive interpretation of the *Defensor pacis*’s connections with Italian republicanism can be sustained, since it falls into the same trap as any other reading that seeks to pin Marsiglio down to a single philosophical position. While James Blythe and I, among others, have taken exception with Condren’s approach, it surely stands as the most original and challenging vision of Marsiglio to have been proposed during the past quarter-century.²³

Ecclesiopolitical Theories

Among the papers contained in the proceedings of the 1980 Padua conference on Marsiglio, very few concentrated entirely or primarily on his attitudes toward the Church and religion or the relation between temporal and secular spheres, in spite of the fact that the second discourse of the *Defensor pacis* is roughly three times as long as the first. Strikingly little has changed in this regard during the intervening period. A single doctoral dissertation, published in a verbatim reprint, constitutes the sole book-length study of the subject in recent times.²⁴ And the author of this volume, Stephen Torracco, is so completely under the influence of Straussian hermeneutics, as Sharon Kaye has shown, that his

²³ Blythe, *Ideal Government*, pp. 199–201; *CC*, pp. 19–20, 23–24.

²⁴ The dissertation was Stephen Torracco, ‘Political Philosophy and the Christian Priesthood: The *Defensor pacis* of Marsilius of Padua’ (doctoral thesis, Boston College, 1986); it was published, unrevised except for its title, as *Priests as Physicians of Souls in Marsilius of Padua’s Defensor pacis* (San Francisco: Mellen Research University Press, 1992).

interpretation convolutes the text beyond recognition.²⁵ According to Torraco, what appears to be Marsiglio's rejection of the worldliness of the Church in favour of clerical poverty and humility, the leading edge of the argument in Discourse II, is really a case for theoretical wisdom in the marriage of philosophical reason to priestly authority. Nothing in the *Defensor pacis* is as it seems on Torraco's 'esoteric' reading: the work contains 'secrets' that will be missed by those who approach it 'too literally'.²⁶

Setting such a caution aside, most recent commentators who address the ecclesiopolitical dimension of the *Defensor pacis* still persist in pursuing a more literal form of scholarship, however. Jürgen Miethke, in his recent study of *De potestate papae*, includes Marsiglio in his survey of the central figures of late medieval ecclesiology.²⁷ Perhaps the most far-reaching development in this connection has been the amount of attention devoted to Marsiglio's place in the ecclesiastical poverty controversy. Despite the sometimes shrill pleading *sed contra* of Conal Condren, scholars such as Kerry Spiers and Marino Damiata have argued that Marsiglio presented a compelling and original position in defence of voluntary spiritual poverty against the views of Pope John XXII and his apologists.²⁸ More specifically, Brian Tierney has reversed a long-standing tradition — founded on the denial by Alan Gewirth, among others, that the *Defensor pacis* endorsed any coherent conception of 'rights'²⁹ — by concentrating on the lengthy discussion of the language associated with ecclesiastical poverty in Chapter 12 of the second discourse.³⁰ Tierney concludes that Marsiglio's dense

²⁵ Sharon Kaye, 'Against a Straussian Interpretation of Marsilius of Padua's Poverty Thesis', *History of Philosophy Quarterly*, 11 (1994), 269–79.

²⁶ Torraco, *Priests as Physicians of Souls*, p. 282.

²⁷ Jürgen Miethke, *De potestate papae: Die päpstliche Amtskompetenz im Widerstreit der politischen Theorie von Thomas von Aquin bis Wilhelm von Ockham* (Tübingen: Mohr Siebeck, 2000), pp. 204–47.

²⁸ Kerry E. Spiers, 'The Sources and Significance of the Doctrine of Ecclesiastical Poverty in the Writings of Marsilius of Padua' (unpublished doctoral dissertation, Tulane University, 1974), and idem, 'Ecclesiastical Poverty Theory'; Marino Damiata, *Plenitudo potestatis e universitas civium in Marsilio da Padova* (Florence: Edizioni Studi Franciscani, 1983). See Condren's reply to Spiers, 'Marsilius of Padua and the Poverty of Traditionalism', *Il pensiero politico*, 11 (1978), 393–96.

²⁹ MPMPP, p. 225. This view is essentially validated by Janet Coleman, 'Medieval Discussions of Property: *Ratio* and *Dominium* According to John of Paris and Marsilius of Padua', *History of Political Thought*, 4 (1983), 209–28.

³⁰ Brian Tierney, 'Marsilius on Rights', *Journal of the History of Ideas*, 51 (1991), 3–17.

framework of definitions, when carefully unpacked, contains the formulation of an innovative distinction between *ius* as objective law and as subjective right that would have significant echoes among succeeding generations of legal and political thinkers.³¹ Beyond the polemical purpose of the chapter to fashion yet another stick with which to beat John XXII, Marsiglio thus deserves a place of honour in the history of rights theory for Tierney.

There remains the broader question of the extent to which Marsiglian theory ultimately seeks to free the temporal political community from the control — institutional as well as moral — of the Church. In a series of unpublished conference papers, two younger scholars, Gerson Moreno-Riaño and Bettina Koch, have commenced a withering attack on the position that orthodox Christian religious principles remain in the background of Marsiglio's theory. Koch argues that while religion forms for Marsiglio a cornerstone of social organization in human communities — in pre-Christian as well as Christian times — this fact renders priests more, rather than less, dangerous to communal order. The persistent threat of 'priestly despotism' means that the rest of the polity must carefully supervise and control the behaviour of clerics lest they claim a measure of independence that will disturb the tranquil conduct of civil affairs.³² Moreno-Riaño's view converges with Koch's interpretation by concentrating on Marsiglio's philosophy of law. Finding in the *Defensor pacis* a quasi-Machiavellian prudential realism, he proposes a dualistic structure to Marsiglian doctrine: the pursuit of so-called 'communal felicity' leads Marsiglio to posit an end to human law that has no basis or corollary in revealed divine law. Not only does this idea of temporal legislation challenge the Thomistic notion of a hierarchic 'derivation' of human statutes from 'higher' law, it even suggests at times that human reason and earthly happiness can be independent from and take precedence over spiritual goals and purposes. Moreno-Riaño's vision of Marsiglian politics draws us perilously (and entrancingly) close to modern political secularism.³³

³¹ Tierney, p. 12.

³² Bettina Koch, 'Priestly Despotism: Unruly Clerics and Their Influence on the Civic Body in Marsilius of Padua's *Defensor pacis*', paper read to the 2002 International Medieval Congress, Leeds; idem, 'Religion as a Principle of Political Order? Comparing Marsilius of Padua and Johannes Althusius', paper read to the 2003 meeting of the Johannes Althusius Gesellschaft, Herborn, Germany; idem, 'Marsilius and Hobbes on the Division of Church and State', paper read to the 2003 annual meeting of the American Political Science Association, Philadelphia.

³³ Gerson Moreno-Riaño, 'State Trumps Church: The Politics of Materialism in Marsilius of Padua's *Defensor pacis*', paper read at the 1999 Arizona Center for Medieval and Renaissance

Historical Significance

Marsiglio has long been a figure who has attracted comment concerning his influence on, and has begged for comparison to, both his contemporaries and succeeding authors. The inclination to examine his thought in relation to others has by no means subsided among scholars of the current generation. Indeed, much of the instructive scholarship on Marsiglio has been conducted by setting him within broader patterns of intellectual history. Some of the connections that have been drawn might well be expected, given the earlier body of Marsiglian literature. Thus, scholars have sharpened our understanding of already demonstrated relationships between Marsiglio and William of Ockham, who knew (and deeply disagreed with) one another;³⁴ Nicholas of Cusa, who appropriated large amounts of the *Defensor pacis* in his *De concordantia catholica*³⁵; and Machiavelli, who was probably unaware of his Italian predecessor.³⁶

Other comparisons have, however, moved farther afield. For example, Jeannine Quillet has revealed how French language treatises of the later fourteenth century, such as the *Songe du Verger* and Nicole Oresme's commentary on Aristotle's *Politics*, drew heavily upon the ideas of Marsiglio.³⁷ Stefan Simonetta has traced the reception of Marsiglio's text among a wide range of important sixteenth- and early-seventeenth-century English political authors. Eschewing those who would discourage any effort to track patterns of intellectual diffusion, Simonetta boldly demonstrates the diverse and significant ways in which quintessentially Marsiglian doctrines shaped, yet also were transformed by, the

Studies annual conference, Tempe; idem, 'Law and Communal Felicity in the Writings of Marsilius of Padua' (unpublished paper).

³⁴ Matthias Kaufmann, 'Wilhelm von Ockham und Marsilius von Padua: Papstkritiker am Hofe Ludwigs des Bayern', in *Musis et Litteris*, ed. by Silvia Glaser and Andrea Kluxen (Munich: Wilhelm Fink Verlag, 1993), pp. 569–80; Janet Coleman, 'Sovereignty and Power Relations in the Thought of Marsilius of Padua and William of Ockham: A Comparison', *Rivista de Faculdade de Ciências Sociais e Humanas*, 7 (1994), 229–53.

³⁵ Gregorio Piaia, *Marsilio e Dintorni: Contributi alla storia delle idee* (Padua: Editrice Antenore, 1999), pp. 202–19; Cary J. Nederman, 'Reason, Rhetoric, and Republic: Republicanisms — Ancient, Medieval, and Modern', in *Renaissance Civic Humanism*, ed. by James Hankins (Cambridge: Cambridge University Press, 2000), pp. 247–69.

³⁶ Conal Condren, 'Marsilius and Machiavelli'; Antonio Toscano, *Marsilio da Padova e Niccolò Machiavelli* (Ravenna: Longo, 1981).

³⁷ Jeannine Quillet, *La Philosophie Politique du Songe du Verger: Sources Doctrinales* (Paris: Vrin, 1977), pp. 51–60, 139–66.

modes of political argumentation in early modern England.³⁸ In a different vein, Takashi Shogimen has proposed an interesting cross-cultural contrast between Marsiglio and the Japanese Tokugawa political thinker Ogyu Sorai. Shogimen shows that superficial similarities in their respective constructions of community are misleading; in fact, Marsiglio's discursively based conception of public decision-making diverges sharply from Sorai's hierarchical distribution of power. In turn, this difference reflects a set of fundamental theoretical divisions that separate Japanese from Western ideas about politics and the public sphere, and that require recognition in advance if mutual historical and cultural understanding is to be achieved.³⁹

Perhaps the most ambitious attempt in recent times to evaluate the historical significance of Marsiglian theory is Bettina Koch's investigation into the influence of Marsiglio in modern political discourse, with particular reference to Johannes Althusius and Thomas Hobbes. In her view, the later authors, in their central concepts of federalism and sovereignty respectively, both commence from Marsiglian foundations but wind up drawing very different conclusions. Hence, two distinct and influential schools of modern political thought depart along divergent roads while driving away from the same medieval source.⁴⁰ Conal Condren — always the spectre in such discussions — might well object (as he once did to Paul Sigmund's reading of Cusa's relation to Marsiglio)⁴¹ that all comparisons along these lines are illusory, since there is no 'true' theoretical core to the *Defensor pacis*. But this begs the point that ideas of discernibly Marsiglian origin do show up across a range of later authors and their premises are understood in remarkably similar ways, even if different conclusions are derived from them.

³⁸ Stefan Simonetta, *Marsilio in Inghilterra: Stato e Chiesa nel Pensiero Politico inglese fra XIV e XVII secolo* (Milan: LED, 2000).

³⁹ Takashi Shogimen, 'Marsilius of Padua and Ogyu Sorai: Community and Language in the Political Discourse of Late Medieval Europe and Tokugawa Japan', *Review of Politics*, 64.3 (2002), 497–523.

⁴⁰ Bettina Koch, *Zur Dis-/Kontinuität mittelalterlichen politischen Denkens in der neuzeitlichen politischen Theorie: Marsilius von Padua, Johannes Althusius und Thomas Hobbes im Vergleich* (Berlin: Humboldt & Duncker, 2005).

⁴¹ Condren, 'Democracy and the Defensor Pacis', p. 313.

Conclusion

Even with the continuing interest in the study of Marsiglio, and the ever-growing body of scholarship on his life, thought, and historical reception, a comprehensive listing of what we do not know about him could itself fill many volumes. I will not use words such as *enigma* or *mystery* to characterize him or his work. These terms might suggest that the problems involved in extending our knowledge in this area are intractable, whereas I have no doubt that scholarship will continue to chip away at uninvestigated or underinvestigated aspects of Marsiglio's world and his doctrines. Indeed, I expect that many new discoveries will ensue from the papers printed in the present volume of essays. It is especially heartening that so many scholars at or near the beginning of their academic careers have invested themselves in the study of Marsiglio. And it is particularly incumbent on those of us who are more senior to do what we can to help our younger colleagues flourish in the presently hostile climate for employment and research.

As for future lines of inquiry, I do not wish to be prescriptive and thus foreclose creative and path-breaking approaches far beyond my own conception. As should be evident from the foregoing, there is considerable work yet to be done in all the major categories that I have surveyed — a more than sufficient amount for those of us old and young to share around, with enough left over to pass along to succeeding generations. I would be remiss, however, if I concluded my survey without taking the opportunity to offer a highly personal reaction to the impending future of Marsiglian studies, in the sense of answering a self-posed question about what I feel to be my own pressing areas of ignorance. First, I am strongly convinced of the need to understand the course of intellectual development that led up to Marsiglio's composition of the *Defensor pacis*, a project which involves establishing a fuller picture of his own education as a physician and Parisian master as well as exploring the complete range of sources to which he had access in writing his major work of political theory. Some of this agenda will naturally be pursued in the process of editing the *Metaphysics* questions, an enterprise the necessity of which I am increasingly certain. Moreover, I also anticipate that Marsiglio scholars will become more vigilant in their examination of the second discourse of the *Defensor pacis*, a section that, like the second half of Hobbes's *Leviathan*, has been grossly neglected by scholars (myself included). I suspect that careful investigation into the structure and evolution of the argument in Discourse II will pay handsome rewards. Finally, there is the matter of Discourse III of the *Defensor pacis*, which is almost always

dismissed (rather like the *Defensor minor*) as a restatement and recapitulation — a kind of executive summary — of the ur-text. Yet the third discourse makes for an odd conclusion, indeed, since it appears to extend Marsiglio's claims far beyond what has been explicitly stated in the preceding work. I await the results that better minds than my own will produce from undertaking serious investigation of Discourse III in its own right as well as in its relation to the first two discourses and to Marsiglio's later literary production. Of course, I have no particular expectation that the wishes on this list will be realized. Still, I hope that the curiosity of some reader might be stimulated by my ignorance to illuminate these remaining dark spots in our knowledge about Marsiglio of Padua, in addition to redressing many other lacunae that I have failed to mention.

Historical Background

THE PHILOSOPHER AS POLITICAL ACTOR — MARSILIUS OF PADUA AT THE COURT OF LUDWIG THE BAVARIAN: THE SOURCES REVISITED

Frank Godthardt

Many scholarly works on Marsilius of Padua's life have been written over the past 130 years.¹ From the very beginning research centred on

¹ Among the most important are Sigmund Riezler, *Die literarischen Widersacher der Päpste zur Zeit Ludwigs des Baiern: Ein Beitrag zur Geschichte der Kämpfe zwischen Staat und Kirche* (Leipzig: Duncker & Humblot, 1874; repr. New York: Franklin, 1961), pp. 30–41; James Sullivan, 'Marsiglio of Padua and William of Ockham', *American Historical Review*, 2 (1896/7), 409–26 and 593–610; Noël Valois, 'Jean de Jandun et Marsile de Padoue, auteurs du Defensor pacis', *Histoire littéraire de la France*, 33 (1906), 528–623; Charles Kenneth Brampton, 'Marsiglio of Padua. Part 1: Life', *English Historical Review*, 37 (1922), 501–15; Felice Battaglia, *Marsilio da Padova e la filosofia politica nel medio evo* (Florence: Felice le Monnier, 1928; repr. Bologna: Cooperativa Libreria Universitaria Editrice Bologna, 1987), pp. 22–50 and 180–95; Johannes Haller, 'Zur Lebensgeschichte des Marsilius von Padua', *Zeitschrift für Kirchengeschichte*, 48 (1929), 166–97; Georges de Lagarde, *Le naissance de l'esprit laïque au déclin du moyen âge*, 6 vols (Paris: Press Universitaires de France, 1934–46), II: *Marsile de Padoue ou le premier théoricien de l'État laïque*, 2nd edn (1948), pp. 14–39; Charles William Previté-Orton, 'Marsilius of Padua', *Proceedings of the British Academy*, 21 (1935), 137–83; Alan Gewirth, *Marsilius of Padua and Medieval Political Philosophy* (New York: Columbia University Press, 1951), 20–23 (hereafter citations of this text appear as *MPMPP*); Ludwig Schmugge, *Johannes von Jandun (1285/89–1328): Untersuchungen zur Biographie und Sozialtheorie eines lateinischen Averroisten* (Suttgart: Anton Hiersemann, 1966), pp. 26–38; Carlo Pincin, *Marsilio* (Torino: Edizione Giappichelli, 1967); Friedrich Prinz, 'Marsilius von Padua', *Zeitschrift für Bayerische Landesgeschichte*, 39 (1976), 39–77; Carlo Dolcini, *Introduzione a Marsilio da Padova* (Rome: Editori Laterza, 1995); Jürgen Miethke, 'Die Wirkungen politischer Philosophie auf die Praxis der Politik im römischen Reich des 14. Jahrhunderts. Gelehrte Politikberatung am Hofe Ludwigs des Bayern', in *Political Thought and the Realities of Power in the Middle Ages*:

Marsilius's connection with Ludwig the Bavarian (Louis IV of Bavaria), the Roman-German king and from 1328 emperor of the Romans. The intention of these studies was described by Alan Gewirth: 'The interest of Marsilius's career with Ludwig lies in the light it throws upon the former's practical interpretation of the meaning of his treatise.'² This study is based on the idea that Marsilius's life is a significant topic in its own right — though during the last decades very little research on Marsilius's life has taken place.

A brief sketch of the main events in Marsilius's life according to most scholars reads as follows: Marsilius's year of birth is unknown; scholars have suggested several years ranging from 1270 to 1290. The first secure date is 1313 when *magister Marsilius de Padua* was mentioned as rector of the University of Paris.³ Some years later, in 1316 and 1318, Marsilius was granted expectancies of prebends in Padua by Pope John XXII, which Marsilius in fact never received.⁴ Probably shortly after this Marsilius turned to the cause of the Italian Ghibellines, since

Politisches Denken und die Wirklichkeit der Macht im Mittelalter, ed. by Joseph Canning and Otto Gerhard Oexle (Göttingen: Vandenhoeck & Ruprecht, 1998), 173–210. All translations are mine unless otherwise noted.

² *MPMPP*, p. 21.

³ *Chartularium universitatis Parisiensis sub auspiciis consilii generalis facultatum Parisiensium. Ex diversis bibliothecis tabularisque collegit cum authenticis chartis contulit, notisque illustravit*, ed. by Heinrich Denifle and Émile Chatelain, 4 vols (Paris: Delalain, 1889–97; repr. Brussels: Culture & Civilisation, 1964), II (pt. 1): 1286–1350 (1891/1964), no. 698, p. 158, and no. 699, pp. 158–159; scholars have generally overlooked the latter document.

⁴ Complete editions of these documents do not exist, yet. The papal bull of 14 October 1316 has come down to us in copy in the papal registers, Archivio Segreto Vaticano (ASV) Reg. Ven. 4, fol. 508^v; ASV Reg. Vat. 64, fol. 248^r, ep. 1714; an extract of about a fifth of its text is published on the basis of Reg. Vat. by Antoine Thomas, 'Extraits des archives du Vatican. Pour servir à l'histoire littéraire du moyen-âge', *Mélanges d'archéologie et d'histoire*, 2 (1882), 448; a summary (*Regest*) in Jean XXII (1316–1334), *Lettres communes, analysées d'après les registres dits d'Avignon et du Vatican*, ed. by Guillaume Mollat, 17 vols (Paris: Fontemoing et al., 1904–47), I, no. 1482, p. 142; the summaries in *Chartularium universitatis Parisiensis*, ed. by Denifle and Chatelain, II (pt. 1), 158, n. 1, and in *Vatikanische Akten zur deutschen Geschichte in der Zeit Ludwigs des Bayern*, ed. by Sigmund von Riezler (Innsbruck: Wagner, 1891; repr. Aalen: Scientia, 1973), no. 6, p. 5, are misleading since they wrongly state that Marsilius actually received the prebend. The papal bull of 5 April 1318 has come down to us in ASV Reg. Vat. 67, fol. 284^r, ep. 968; a summary in Jean XXII (1314–1334), *Lettres communes*, ed. by Mollat (1905), II, no. 6849, p. 123; before that unsatisfactorily summarized in *Vatikanische Akten*, ed. by Riezler, no. 100, p. 66.

a papal letter of 1319 mentioned him as a proponent of their cause.⁵ The next secure date is 24 June 1324, when Marsilius, according to the book's epitaph, completed his main work, the *Defensor pacis*, in Paris.⁶ As late as 1326 Marsilius is supposed to have left Paris with his colleague John of Jandun. Marsilius and John eventually found refuge at King Ludwig the Bavarian's court. A year later they accompanied the German king on his Italian expedition. In October 1327 the Pope declared five sentences of the *Defensor pacis* heretical and excommunicated Marsilius and with him John of Jandun.⁷ In Rome Ludwig is

⁵ A complete edition in *Lettres secrètes et curiales du pape Jean XXII (1316–1334) relatives à la France*, ed. by Auguste Coulon and Suzanne Clémencet, 3 vols (to date) (Paris: Fontemoing, et al. 1900–72), I, no. 860, cols 746–47; before that printed in *Documents pontificaux sur la Gascogne d'après les archives du Vatican, Pontificat de Jean XXII (1316–1334)*, Textes publiés et annotés pour la Société historique de Gascogne par l'abbé Louis Guérard, I (Paris: Champion, 1896), no. 86, p. 135–137; the main part of the document is printed by Charles William Previté-Orton, 'Marsilius of Padua and the Visconti', *English Historical Review*, 44 (1929), 278–79.

⁶ According to three manuscripts of the *Defensor pacis* the date of its completion is 24 June 1324; see Marsilius von Padua, *Defensor pacis*, ed. by Richard Scholz, *Fontes Iuris Germanici Antiqui*, 2 vols (Hannover: Hahnsche, 1932/33), III, 3, p. 613, ll. 14–16: 'Anno trecenteno milleno quarto vigeno | Defensor est iste perfectus festo baptiste. | Tibi laus et gloria, Christe!' (Hereafter citations of this text appear as *DPb* along with discourse, chapter, section, and page number.) One more manuscript not known to Scholz is mentioned by Jürgen Miethke, *De potestate papae. Die päpstliche Amtskompetenz im Widerstreit der politischen Theorie von Thomas von Aquin bis Wilhelm von Ockham* (Tübingen: Niemeyer, 2000), p. 210, n. 634. Manuscript X does not have that final sentence but instead names Paris as the place of completion; see *DPb*, III, 3, p. 613, ll. 23–25: 'Compositus et completus est liber iste Anno domini MCCCXXIII Parisiis in vico Sorbona in domo studentium in sacra theologia ibidem.'

⁷ A modern edition of this important document does not exist, due to that fact the condemnation bull has not been studied satisfactorily yet. It is published only in three document collections of the seventeenth and eighteenth centuries, for the first time by Odorico Rinaldi in *Annales ecclesiastici ab anno 1198, ubi card. Baronius desinit, auctore Odorico Raynaldo*, 21 vols (Rome: Typographia Vaticana et al., 1588–1677), XV: 1305–1334 (1652), now more easily accessible in *Caesaris S. R. E. card. Baronii, Od. Raynaldi et Jac. Laderchii Annales ecclesiastici*, newly ed. by Augustin Theiner, 37 vols (Bar-le-Duc: Guerin, 1864–83), XXIV: 1313–1333 (1872), ad annum 1327, § 28–35, pp. 322b–329a; *Thesaurus Novus Anecdotorum*, ed. by Edmond Martène and Ursin Durand, 5 vols (Paris: Delaulne et al., 1717; repr. Farnborough: Gregg, 1968, and New York: Franklin, 1968), II: *Urbani papae IV. epistolae LXIV, Clementis papae IV. epistolae DCCXI, Joannis XII. processus varii in Ludovicum Bavarum & ejus asseclas, Innocentii VI. registrum epistolarum anno MCCCXXI, aliaque plura de schismate pontificum Avenionensum monumenta* (1717/1968), cols. 704–16; *Collectio judiciorum de novis erroribus, qui ab initio duodecimi seculi post incarnationem verbi, usque ad annum 1632 in ecclesia proscripti sunt et notati: Censoria etiam judicia insignium academiarum, inter alias Parisiensis & Oxoniensis, tum*

supposed to have appointed Marsilius *vicarius in spiritualibus* in 1328. After Marsilius returned together with Ludwig from the Roman expedition he spent the rest of his life in Munich at Ludwig's court. In that time he wrote the *Defensor minor* and died in 1342 or 1343.⁸

But there are still questions that remain unanswered. Moreover, many sources on his life have not been studied closely enough. In this paper two crucial phases of his life will be reassessed by a closer examination of the sources: his final departure from Paris after he had completed the *Defensor pacis* and his time of political activity during the Roman expedition of Ludwig the Bavarian.⁹ More than other events in Marsilius's life these can throw light on the political ambitions of this philosopher.

Alan Gewirth, for example, states that after the *Defensor pacis* was finished and circulated in Paris, Marsilius continued his studies and teaching, and was even preparing to give a course in theology when his authorship of the *Defensor pacis* became known in the year 1326. Thus he was forced to flee Paris with John of Jandun.¹⁰ This departure is commonly considered a sudden escape from persecution by the Church. As refugees, scholars believe, Marsilius and John fled

Lovaniensis & Duacensi in Belgio, aliorumque collegiorum theologiae apud Germanos, Italos, Hispanos, Polonos, Hungaros, Lotharos, etc. Cum notis, observationibus, & variis monumentis ad theologicas res pertinentibus, ed. by Charles Duplessis d'Argentré, 3 vols (Paris: Cailleau, 1728–36; repr. Brussels: Culture & Civilisation, 1963), 1: *Monumenta ab anno 1100 usque ad annum 1542* (1728/1963), pp. 304a–311b.

⁸ Marsilius's death cannot be dated exactly. A documented speech of Pope Clement VI of 10 April 1343 is the first source that mentions Marsilius as dead; see Hilary Seton Offler, 'A Political "Collatio" of Pope Clement VI, O.S.B.', *Revue Bénédictine* 65 (1955), 136, ll. 175–77.

⁹ This article is a revised synthesis of two papers I presented at the International Medieval Congress, Leeds, England, in 2002 and 2003. The papers' titles were 'Marsilius of Padua and John of Jandun at the Court of King Ludwig the Bavarian: Exile or Destination?' and 'Philosopher and Imperial Vicar: Marsilius of Padua's Role in Ludwig the Bavarian's Roman Expedition'. For a more detailed account see my dissertation: 'Marsilius von Padua und der Romzug Ludwigs des Bayern: Zum Verhältnis von politischer Theorie und politischem Handeln im späten Mittelalter' (yet unpublished doctoral thesis, Universität Hamburg, 2006), especially Chapters 4 and 7. I wish to thank Bettina Koch, Dennis W. Moran, Gerson Moreno-Riaño, Cary J. Nederman, and Jürgen Sarnowsky for their helpful comments.

¹⁰ *MPMPP*, p. 21.

to King Ludwig who had been declared deposed and excommunicated by Pope John XXII in 1324. But in fact the reasons for, and the circumstances behind, their departure from Paris still remain a mystery.¹¹

In my opinion, it is much more likely that Marsilius had always intended to leave Paris after the *Defensor pacis* was completed. Two citations of the *Defensor pacis* will show that it is more than likely the fact that all along it was Marsilius's intention to leave Paris for Ludwig's court after he wrote his book.

First, Marsilius explicitly dedicated his book to Ludwig:

Acting from reverence for the giver, from love of spreading the truth, from fervent affection for country and brethren, from pity for the oppressed, from a desire to save them, to recall the oppressors from the bypass of error, and to arouse the resistance of those who suffer such things when they can and should combat them; and beholding in you especially, most exalted Ludwig, emperor of the Romans, God's servant, who shall give to this task that eternal fulfillment of it which you desire, and who by some special ancient birthright, as well as by your singularly heroic and outstanding virtue, have a firmly ingrained love of wiping out heresies, upholding and preserving the catholic truth and every other worthy discipline, uprooting vice, encouraging virtuous pursuits, extinguishing strife, and spreading and nourishing peace and tranquillity everywhere — I have written down the sentence which follows, after a period of diligent and intense study, thinking that these may be of some help to your vigilant majesty, who bestows careful attention upon the above-mentioned problems and other which may occur, as well as upon all matters affecting the public welfare.¹²

¹¹ Marsiglio of Padua, *Defensor minor and De translatione Imperii*, ed. by Cary J. Nederman, trans. by Cary J. Nederman and Fiona Watson (Cambridge: Cambridge University Press, 1993), p. xi. Hereafter, citations of this text appear as *DM*.

¹² Marsilius of Padua, *Defensor pacis*, trans. by Alan Gewirth, with a new Afterword and Bibliography by Cary J. Nederman (New York: Columbia University Press, 2001), pp. 6–7 (hereafter, citations of this text appear as *DPc* along with page number); 'Propter dantis reverenciam, propalande veritatis amorem, patrie ac fratrum caritatis fervorem, oppressorum siquidem misericordiam et reservacionem, opprimencium vero ab erroris devio revocacionem, eaque permittencium, hiis tamen obviare debencium atque potencium excitacionem; in te quoque respiciens singulariter, tamquam Dei ministrum huius operi finem daturum, quem extrinsecus optat inesse, inclitissime Ludovice Romanorum imperator, cui sanguinis antiquo, speciali quasi quodam iure, nec minus singulari eroica tua indole ac preclara virtute insitus et firmatus est amor hereses extirpare, catholicam veritatem omnemque aliam studiosam disciplinam extollere atque servare, vicia cedere, studia propagere virtutum, lites extinguere, pacem seu tranquillitatem ubique diffundere ac nutrire: sequencium sentenciarum summas post tempus diligentis et intente perscrutacionis scriptire mandavi, ex ipsis arbitrans iuvamentum quoddam evenire posse tue vigili maiestati, prescriptis lapsibus atque contingentibus aliis reliquisque utilitatibus publicis providere curanti': *DPb*, I. I. 6, pp. 7–8.

This statement indicates Marsilius's intention to support Ludwig's cause against his papal opponent. The book itself was, as Cary Nederman put it, 'a call to action'.¹³

Secondly, it seems unlikely that Marsilius would choose to stay in Paris as the author of a book that soon would be considered heretical. The question was never raised as to why Marsilius would not have foreseen ecclesiastical persecution as a potential danger.

In fact, Marsilius did not underestimate this danger. In the *Defensor pacis* he anticipates several impediments or enemies to the truths contained in his book:

One of these enemies is the persecution of the violent power of the Roman bishops and their accomplices. These will strive with all might to defeat this undertaking and its truthful proclaimers, who squarely oppose their plan to seize and unjustly to possess temporal goods, and their ardent desire for rulership.¹⁴

Marsilius was well aware of the danger in which he had put himself. Although the *Defensor pacis* does not unveil the name of its author, it gives clear hints of the author's identity.¹⁵ Publishing the book in Paris would almost certainly have put Marsilius in great danger. And if the *Defensor pacis* were published in Paris, as most scholars believe, it would not have taken two years to discover who its author was. From that it seems more likely that he left Paris as soon as possible without publishing the book in Paris beforehand. Other historical sources support this impression.

There are three sources that give an account either of Marsilius's and John of Jandun's departure from Paris or their arrival at Ludwig's court: one continuation of William of Nangis's chronicle,¹⁶ the papal bull against King Ludwig of 3 April 1327, the first papal document dealing with Marsilius and John

¹³ Cary J. Nederman, *Community and Consent: The Secular Political Theory of Marsiglio of Padua's Defensor Pacis* (Lanham, MD: Rowman & Littlefield Publishers, 1995), p. 14. Hereafter, citations of this text appear as CC.

¹⁴ *DPc*, p. 98; 'Uno siquidem persecucione violente potestatis Romanorum episcoporum suorumque complicitum. Ipsum etenim ipsisuque propalatores veridicos totis viribus nitentur destruere, tamquam directo adversantes ipsorum proposito detinendi et possidendi temporalia minus iuste, necnon eorum ardenti desiderio principatus': *DPb*, II. I. 1, pp. 137–38.

¹⁵ *DM*, 'Editor's Introduction', p. xi, and CC, p. II.

¹⁶ *Chronique latine de Guillaume de Nangis de 1113 a 1300 avec les continuations de cette chronique de 1300 a 1368*, new edn, reviewed on the basis of the manuscripts, annotated and edited for the Société de l'histoire de France by Hercule Géraud, 2 vols (Paris: Renouard, 1843; repr. New York: Johnson, 1965).

of Jandun as suspected heretics,¹⁷ and the transcript of the examination of one of Marsilius's former students by the papal court in Avignon.¹⁸

The continuation of William of Nangis's chronicle has the most detailed account of the arrival at Ludwig's court, and it is the only source suggesting that Marsilius and John of Jandun arrived at Ludwig's court in the year 1326, which is the basis of the 'escape theory'. This continuation was written in 1340 and sides with the party of the Pope against King Ludwig. It presents disparate historical accounts year by year in an annalistic manner. To the year 1326 it states:

Around that time two sons of the devil, namely the Frenchman John of Jandun and the Italian Marsilius of Padua, came from the university of Paris to Nuremberg to Duke Ludwig who called himself publicly king of the Romans. Since they were very famous scholars in Paris they were found and recognised by certain members of Ludwig's court who had known them from Paris. On their account they were admitted not only to Ludwig's court but also in his favour. Thus, it is said, the duke welcomed them with these words: 'By God! Who made you leave the country of peace and glory to come to this land full of war, unrest, and agitation?' They answered: 'The aberration of the Church of Christ which we could no longer stand with a clear conscience made us come to you. Since the empire is rightfully yours it is up to you to remedy this disgrace.' [...] The Bavarian did not completely agree with this opinion or rather insanity. He found out after he had gathered the learned men of his court that this was a faithless and corrupt opinion. [...] Thus he was counselled to punish these men since it is the emperor's duty not only to guard the catholic faith and the faithful but also to exterminate the heretics. To that, it is said, the Bavarian answered: It is inhumane to punish or kill people who made their way to his court and left their home, their good fortune and honours. Although he did not agree with them, he decreed to support them.¹⁹

¹⁷ *Constitutiones et acta publica imperatorum et regum*, vol. 6, part I, ed. by Jakob Schwalm, *Monumenta Germaniae Historica, Legum sectio 4* (Hannover/Leipzig: Hahnsche, 1914–27), no. 274, pp. 185–86.

¹⁸ Carlo Pincin, 'Appendice 1', in Marsilio da Padova, *Defensor pacis nelle traduzione in volgare fiorentino del 1363*, ed. by Carlo Pincin (Torino: Fondazione Luigi Einaudi, 1966), pp. 569–71; Pincin uses the manuscript Paris, Bibliothèque Nationale, Ms. lat. 4246, cc. 47–48. The document was previously printed by Etienne Baluze, *Miscellanea*, ed. by Giovanni Domenico Mansi, 4 vols (Lucca: Junctinius, 1761–64), II, 280a–81a.

¹⁹ 'Circa ista fere tempora ad Ludovicum ducem Bavariae se regem Romanorum publice nominantem, venerunt Nurembergh [*in nomine Bereth*] de Studio Parisius duo filii diaboli, videlicet magister Johannes de Gonduno natione gallicus, et magister Marsilius de Padua natione italicus; et cum fuissent Parisius in scientia satis famosi, a quibusdam de ducis familia, qui eos Parisius agnoverant, circumspecti et agniti, ad eorum relationem ad ducis non solum

This is not an account of two refugees seeking shelter but of two ‘men with a mission’. Nothing indicates that the Parisian scholars were escaping the danger of being recognized as heretics. Rather, this source supports the view that Marsilius and with him John of Jandun left Paris deliberately with the intention to offer his service to King Ludwig.

Most scholars have failed to notice that the chronicler gives two accounts of the arrival in Bavaria partly using the same words. There is a shorter account in the year 1318.²⁰ For the similarity of these accounts and the anticipation of Ludwig’s conflict with Pope John, even though there are two different dates, it is unlikely that this is evidence for two separate arrivals at Ludwig’s court. Moreover, both accounts begin very carefully with the words ‘about that time’. Perhaps the chronicler is confused about the date of his account. At the very least this chronicle is not proof of an arrival in the year 1326. Thus the starting point for the escape theory can hardly be maintained.

In the bull *Quia iuxta doctrinam* Pope John says he has received

a message both in writing and verbally from many trustworthy men saying that two worthless men, sons of perdition and pupils of malediction, one calling himself Marsilius of Padua and the other John of Jandun, who [...] did not dare to spread the

curiam, sed etiam gratiam finaliter admittuntur. Unde et dicitur ducem praedictum eos esse taliter allocutum: “Pro deo, quis movit vos venire de terra pacis et gloriae ad hanc terram bellicosam, refertam omnis tribulationis et angustiae?” Responderunt, ut dicitur: “Error quem in ecclesia Dei intuemur nos fecit hucusque exulare, et non valentes hoc amplius cum bona conscientia sustinere, ad vos confugimus; cui cum de jure debeatur imperium, ad vos pertinet errata corrigere, et male acta ad statum debitum revocare.” [...] Cui tamen sententiae, quin potius vesaniae, Bavarus non totaliter acquievit; quinimo convocatis super hoc peritis, invenit hanc esse prophanam et pestiferam persuasionem [...]. Unde et persuasum est ei ut illos puniret, cum ad imperatorem pertineat non solum catholicam fidem et fideles servare, sed etiam haereticos extirpare. Quibus dicitur sic Bavarus respondisse: inhumanum esse homines punire vel interficere sua castra secutos, qui propter eum dimiserunt propriam patriam, fortunam prosperam et honores. Unde eis non acquiescens, eos semper assistere praecepit; juxta eorum statum suamque magnificentiam eos donis et honoribus ampliavit’: *Chronique latine*, II, 74–76.

²⁰ ‘Circa ista tempora de Flore lilii Parisius studii exierunt duo filii nequam genimina viperarum, scilicet magister Johannes de Janduno, natione Gallicus, et magister Marsilius de Padua, natione Italicus, multa falsa et erronea mentientes contra Ecclesiam et ejus honorem, multos latratus pestiferos emittentes, Bavari contubernio sociati, moventes et excitantes non debere eum timere ad verba frivola Papae, quinimo jura imperii more praedecessorum suorum etiam contra Ecclesiam viriliter observare, quinimo jura Ecclesiae magis ex dignitate imperii processisse quam alibi’: *Chronique latine*, II, 14–15.

poison of their insanity at this university [of Paris], hurried to go to Ludwig [...] and presented to him a book full of heresies as many trustworthy catholic men stated who examined many parts of that book. They offered to defend and to teach its content and actually did so with bold daring several times in public and in the presence of Ludwig.²¹

Pope John received his information not from scholars in Paris but from (not yet identified) men of with access to Ludwig's court. This account supports the view that Marsilius and John of Jandun left Paris soon after the *Defensor pacis* was completed. Furthermore the Curia believed — even three years after the *Defensor* was written — that it was not published in Paris. Thus, there is no indication that Marsilius and John had to flee because their heresies had become known in Paris. Later bulls against them do not ever mention that they evaded ecclesiastical persecution in Paris.

The examination of Marsilius's former student, Francis of Venice, has no explicit information concerning the date of Marsilius's departure, either. However, it has some interesting information about the circumstances of the departure. Although it was stated in the papal bull of 1327 that the *Defensor pacis* was not published in Paris, Francis was accused in 1328 of assisting Marsilius and John of Jandun in publishing the book in Paris and other locations. Francis denied this and said 'he did not believe that these faithless men had dared to publish a book of that kind in Paris'.²²

Furthermore Francis was accused of having lent money to Marsilius and knowing of others who lent money to Marsilius, as well. Francis answered,

that he gave some money to Marsilius but not on loan. Rather, it was the case that Marsilius took care of it and thus he gave him his purse and sometimes one or two Florin so that now Marsilius owes him the sum of 13 Parisian shillings. Furthermore

²¹ 'Ad nostri apostolatus auditum multorum fidedignorum tam litteralis perduxit insinuatio quam verbalis, duos viros nequam perditionis filios et maledictionis alumpnos, quorum unus Marsilium de Padua et alter Iohannem de Ianduno se faciunt nominari, qui [...] vesanie sue virus effundere non auderent, ad Ludovicum predictum [...] gressus suos properaverunt dirigere sibi que librum quemdam quem composuerant erroribus profecto non vacuum, set plenum heresibus variis, sicut fidedignorum multorum catholicorum habet assertio, qui librum ipsum examinauerunt in multis articulis, presentarunt, offerentes se paratos contenta in eodem defendere ac docere, quod et facere publice dicto Ludovico presente ausu temerario pluries presumpserunt': *Constitutiones* 6.1, no. 274, § 3, pp. 185–86.

²² 'Non credens, ut dixit, quod dicti perfidi viri fuissent ausi in Civitate Parisiensi talia publicare': Pincin, 'Appendice', no. 1, p. 570.

he said that Marsilius — who cunningly pretended that he would give a lecture in theology — received money from some of his friends on loan.²³

Francis then gives an account of the names of these friends and the sum of money they gave Marsilius.²⁴ To that he was asked,

if these men lent Marsilius the money at the time when he left from Paris to Germany. He answered he does not believe this. It rather happened one or two months before his departure. To that he was asked how he found out about that. He answered that he heard it said by the creditors who — when they learned about Marsilius's departure — complained about it and decried Marsilius publicly because of the borrowed money.²⁵

This paragraph concerning the lecture is often misinterpreted, and has played the most important role to support the thesis that Marsilius did not intend to leave Paris. Actually, Marsilius had not seriously planned to give a lecture in Paris. He wanted to borrow money without revealing his true intentions. He did not suddenly decide to escape Paris; he had been planning on leaving Paris all along.

To sum up the evidence concerning the departure from Paris and the arrival at Ludwig's court, there is not enough evidence to believe that Marsilius and John of Jandun left Paris as late as 1326. There is no reason to believe that they had no intention to leave Paris at all. There is no evidence that the *Defensor pacis* was published in Paris before their departure. And there is no evidence for ecclesiastical persecution or for any kind of actual danger as long as they were in

²³ 'De pecunie mutatione dixit quod ipse quandoque tradidit dicto Massilio de pecunia sua, non mutuando, sed ut eam sibi custodiret, et inde sibi bursas ministraret, sicut interdum sibi unum vel duos florenos tradebat; et adhuc idem Massilius tenetur dicto Francisco ratione dicti depositi in xij solidis Parisiensibus. Item dixit quod dictus Massilius fingens cautelose se lecturum Parisius cursum in theologia recepit pecuniam mutuo a quibusdam amicis suis': Pincin, 'Appendice', no. 1, p. 571.

²⁴ 'Videlicet a domino Roberto de Bardis studente Parisius recepit ix florenos auri mutuo. Item a magistro Andrea de Reate chirurgico recepit x libras Parisienses. Item a magistro Petro de Florentia fisico x florenos vel x libras Parisienses. Item audivit dici quod dominus Andreas de Florentia magister Regis Francie mutuavit dicto Massilio pecuniam, tamen nescit summam': Pincin, 'Appendice', no. 1, p. 570.

²⁵ 'Interrogatus si predicti mutuaverant dictas pecunias memorato Massilio in recessu suo, videlicet de Parisius in Alamanniam, dixit quod non credit, sed bene per unum vel duos menses ante recessum predictum fuit factum dictum mutuum. Item interrogatus quomodo sciebat predicta, dixit quod pro eo quia ea dici audiverat a dictis mutantibus; qui dum sciverunt recessum ipsius Massilii, conquerebantur de ipso, ac eundem publice de predictis receptis per eum mutuo pecuniis diffamabant': Pincin, 'Appendice', no. 1, p. 570.

Paris. Based on this, I think that the escape theory can no longer be maintained. All evidence supports and none contradicts the view that Marsilius and John of Jandun planned to leave Paris deliberately soon after Marsilius's book was finished. King Ludwig's court was not their place of exile but the destination of their political ambitions.

Perhaps it is even possible to determine the time when Marsilius and John of Jandun arrived at King Ludwig's court more precisely. The bull of 3 April 1327 deals with several offences of Ludwig, each in a separate paragraph. The first paragraph of Ludwig's offences concerns his last appellation against Pope John in May 1324. The second paragraph deals with the reception of Marsilius and John of Jandun by Ludwig, which could not be dated yet. In the third paragraph Ludwig is accused of planning the marriage of his second son to a noble girl with a degree of relationship too close to marry without a papal dispensation for which Ludwig did not ask.²⁶ This regarded the arrangement Ludwig made with his former adversary and anti-king, Frederick of Habsburg, on 13 March 1325. They agreed that Ludwig's son Stephan and Frederick's daughter Elisabeth would marry in order to confirm their alliance.²⁷ Assuming this papal bull follows a chronological order we can conclude that Marsilius and John of Jandun arrived in Nuremberg not later than March 1325.

Marsilius's first step was successful. But did he want merely to gain influence on the King's decisions and find a role as a counselling philosopher? Or did he have personal political ambitions for offices and power as well? That Marsilius had influence on Ludwig's political actions is a well-accepted fact. When Ludwig started his Italian expedition in 1327 he took Marsilius and John of Jandun with him. Later, in Rome, Marsilius was at the height of his influence as a counsellor. Through three spectacular political actions Ludwig demonstrated — counselled by Marsilius — his idea of the relation of empire and papacy: his imperial coronation in January 1328, the deposition sentence against Pope John XXII in April 1328, and the institution of an antipope in May 1328.

Ludwig was crowned emperor in a never before seen ceremony without the pope or legates of the pope taking part. Ludwig regarded certain representatives

²⁶ 'Rursus ut se manifestaret evidentius canonum contemptorem, filio suo secundogenito quandam puellam nobilem eidem filio in gradu consanguinitatis prohibito attinentem contra interdicta canonum in uxorem, quantum in eo fuit, dedit dictumque matrimonium, immo potius incestuosam copulam inter eos sollenizari fecit in ecclesia publice ecclesiastico interdicto supposita, dispensatione super hoc non obtenta': *Constitutiones* 6.1, no. 274, § 5, p. 186, ll. 22–26.

²⁷ *Constitutiones* 6.1, no. 29, § 6, p. 19.

of the Roman people and deposed bishops as legitimate coronators and consecrators. It can be shown that this procedure met Marsilius's theoretical propositions even better than scholars have previously believed.²⁸ Marsilius's influence became even more visible when it came to the deposition of Pope John XXII. In addition to the correspondence between the deposition sentence and Marsilius's writings, there are several historical sources explicitly relating that it was Marsilius who composed the deposition sentence.²⁹

About that time we witness a change in Marsilius's role: he began to play a more active part in the Roman affairs. In a mandate on 15 April 1328, Pope John commanded the Roman people to capture Marsilius and John of Jandun. This order could not be carried out. However, this is one of the most important sources for Marsilius's political activities, because this is the first papal document dealing exclusively with Marsilius and John of Jandun since the papal condemnation of the *Defensor pacis* on 23 October 1327. This mandate both contains more information than previously thought and must be reinterpreted in various ways.

Pope John XXII wrote:

Marsilius did not shy away — under the pretext of the vicariate [*pretextu vicariatus*], which he asserted was given to him there from the said Ludwig — to proceed to Our anger in a monstrous manner both against the clerics — since they do not want to violate the interdict that lay over the city by the authority of Our legal proceedings because of the presence of Ludwig — and against their relatives.³⁰

What kind of vicariate was it that Marsilius received from Ludwig in Rome? At first look, it can only be inferred from the papal mandate that Ludwig conferred on Marsilius the authority to force the Roman clergy to ignore the papal interdict. One of the most confusing facts about this is that almost all scholars state that Marsilius was appointed 'vicarius in spiritualibus'³¹ or 'spiritual vicar

²⁸ For an analysis of Ludwig's imperial coronation, see Chapter 5 of my doctoral thesis.

²⁹ For an analysis of the deposition of John XXII, see Chapter 6.1 of my doctoral thesis.

³⁰ 'Marcilius pretextu vicariatus, quem ibidem sibi per dictum Ludovicum commissum asserit, tam contra clericos, quia nolunt interdictum, cui propter dicti Ludovici presentiam subiacere processum nostrorum auctoritate Urbs predicta noscitur, violare quam eorum cognatos et affines in nostram offensam procedere inmaniter non veretur': *Constitutiones* 6.1, no. 439, p. 363.

³¹ This phrase was first used in 1929 by Haller, p. 179; Ferdinand Gregorovius, *Geschichte der Stadt Rom im Mittelalter. Vom V. bis zum XVI. Jahrhundert*, 6 vols (Stuttgart: Cotta, 1859–67), VI, 152, was the starting point for this by naming Marsilius 'geistlicher Vikar'.

of the city' by Ludwig.³² Even more puzzling is that this title or office is printed in italics or quotation marks because there is no document that mentions Marsilius as a *vicarius in spiritualibus* — neither the papal mandate quoted above nor any other document.

In addition, there is one question that has not been answered or even raised in Marsilius scholarship: What kind of office is a vicar in spiritual affairs? Like most bishops, the pope as bishop of Rome had a vicar general. Unlike other vicars general, the *vicarius in spiritualibus in Urbe* was suffragan bishop for the diocese of Rome as well. From the middle of the thirteenth century to the middle of the sixteenth century the *vicarius in spiritualibus* was always a bishop of one of the dioceses near Rome.³³

If Ludwig really had appointed Marsilius *vicarius in spiritualibus* in Urbe, Marsilius would have been spiritual vicar of the Pope. John XXII would never have passed this without any comment. Some scholars must have thought the same and tried to explain Pope John's silence by naming Marsilius papal vicar of the antipope Nicholas V.³⁴ But this is even less convincing, since the antipope was elected only one month later.

Since there is no evidence for Marsilius holding a spiritual or papal office, the question must be raised as to why the vast majority of scholars did believe it and still do. The answer is in the editing history of medieval documents. Nineteenth-century scholars had only one edition of that papal letter. It was in the monumental Catholic history of the Church, the *Annales ecclesiastici*, established by Cardinal Cesare Baronio in Rome at the end of the sixteenth century. Baronio and his successors used the vast resources of the Vatican archives so intensely and printed so many papal documents that historians have used his work for a long time, and prints of many papal documents could and can only be found in his work. Baronio's continuator, Odorico Rinaldi, printed the above

³² Brampton, p. 511; *MPMPP*, p. 22.

³³ For the office of a *vicarius in spiritualibus in Urbe*, see Paul Hinschius, *System des katholischen Kirchenrechts mit besonderer Rücksicht auf Deutschland*, 6 vols (Berlin: Guttentag, 1869–97), I, 485–91; Konrad Eubel, 'Series Vicariorum Urbis a. 1200–1558', *Römische Quartalschrift für christliche Altertumskunde und Kirchengeschichte*, 8 (1894), 493–99, (p. 493); Alain de Boüard, *Le régime politique et les institutions de Rome au Moyen Age 1252–1347* (Paris: Boccard, 1920), pp. 70–73; Willibald M. Plöchl, *Geschichte des Kirchenrechts*, 5 vols (Vienna and Munich: Herold, 1953–69), II: *Das Kirchenrecht der abendländischen Christenheit 1055 bis 1517*, 2nd edn (1962), pp. 86–87.

³⁴ Wilhelm Altmann, *Der Römerzug Ludwigs des Baiern: Ein Beitrag zur Geschichte des Kampfes zwischen Papsttum und Kaisertum* (Berlin: Gärtner, 1886), p. 106.

papal letter and commented on it in 1652. This comment has obviously influenced the interpretation of the document. No scholar has quoted or discussed this opinion of Rinaldi's, though. Rinaldi wrote: 'Marsilius took the office of the papal vicar, which had been held by the Bishop of Viterbo, from Ludwig the Bavarian, as if it was to him to care about and administer the sacraments.'³⁵ Rinaldi's interpretation cannot be justified by the papal document, because the office of the papal vicar was neither explicitly nor implicitly mentioned. But now it can be explained why scholars — believing Rinaldi's comment — came to name Marsilius *vicarius in spiritualibus*. The mentioned Bishop of Viterbo was Angelo Tignosi and he actually held the office of the *vicarius in spiritualibus in Urbe* from 1325 to 1334.³⁶ Thus only a comment of a seventeenth-century editor made scholars believe Marsilius held this papal office. This misjudgement has existed for a long time only because very few scholars gave an account of the papal letter and even fewer actually quoted the document.

So what other kind of vicariate was it that Marsilius received from Ludwig, if Marsilius received a vicariate at all? Since it can now be excluded that Marsilius was spiritual or papal vicar it could be thought possible that Marsilius held the office of an imperial vicar.³⁷ But an office as important as an imperial vicar held by the most prominent heretic of that time would have been mentioned in at least one letter or chronicle of that time, which it was not. There is an easier and better way to understand what *vicariatus* stands for. I would propose to translate *vicariatus* not as 'office of a vicar' but rather as 'deputyship', or better, 'authorization'. With that change the Pope's letter makes more sense. It reads now: Marsilius acted 'under the pretext of the authorization which he asserted was given to him there from the said Ludwig'. Thus, I would doubt that Marsilius held a regular office at all, neither spiritual or papal nor imperial.

What else did Marsilius do, authorized by Ludwig, apart from forcing clerics to read masses? There is one document that gives us some further information about Marsilius's political activities. As a part of their reconciliation process with the Pope the Romans had to confess their sins against the papacy and its rights. In this confession Marsilius is mentioned, together with one of the sons of

³⁵ 'Marsilius à Ludovico Bavaro, quasi ad eum sacrorum cura et administratio spectaret, pontificii vicarii munus, cui praeerat Viterbiensis episcopus, scelere acceperat': Rinaldi, *Annales ecclesiastici*, ed. by Theiner, vol. 24, ad annum 1328, § 9, p. 341a.

³⁶ Eubel, 'Series Vicariorum Urbis', p. 496.

³⁷ That Marsilius must have held the office of an imperial vicar was what I believed at the time when I sent in my paper's title to the IMC programme committee; see note 9, above.

Sciarra Colonna who was the leader of the Roman faction that had invited Ludwig to enter Rome:

Even the clergy of the city was seduced in a fraudulent and deceptive manner by Giovanni, the son of the said Giacomo Sciarra [Colonna], and the heretic Marsilius to elect certain clerics for the good state of the city, as they pretended: they procured that these clerics consented to the election of Pietro of Corvaro as antipope and apostate though.³⁸

This document, too, deals with Marsilius's relation to the Roman clergy, stating that a clerical council was established by Marsilius that had to take part in the election of the antipope. Since the cardinals of the Roman Church resided in Avignon, Ludwig had to find a different way to institute a new pope. The election by the people and clergy of Rome resembles both the procedure of the time before 1059 and Marsilius's proposition to institute a pope.³⁹ Thus, Marsilius not only influenced the decision concerning the mode of the new pope's election, but also took part in the organization of the election procedure in person. The questions of procedure were treated very carefully. The fact that also one of Sciarra Colonna's sons was involved in establishing and leading the clerical electoral council was to show that this new procedure of a pope's election was a matter of both the emperor and the Roman people. Here it can clearly be seen how Marsilius acted on behalf of Ludwig, that he represented the Emperor in that matter, whether he was an official vicar of the Emperor or just acting in his name. In Rome, Marsilius was counsellor as well as political protagonist; he not only had influence but power as well. The result was that Marsilius in part could put his own theory into practice. This is, in my opinion, a success that could not easily be foreseen.

The common opinion concerning Marsilius's importance after Ludwig was forced to leave Rome is that his presence in the political arena was over. But there is one historical source that indicates that it could have been quite

³⁸ 'Clerus etiam dicte Urbis per Ioannem dicti Iacobi Sciarrae filium, et Marsilium de Padua hereticum ad eligendum certos clericos Urbis eiusdem pro bono statu, sicut fingebant, ipsius fraudulenter et deceptorie fuit inductus: quos quidem clericos prefati Ioannes et Marsilius procurarunt electioni dicti Petri de Corbario in Antipapam et apostaticum consentire': Augustin Theiner, *Codex diplomaticus domini temporalis S. Sedis: Recueil des documents pour servir à l'histoire du gouvernement temporel des états du Saint Siège. Extraits des archives vatican*, 3 vols (Rome: Imprimerie du Vatican, 1861–62; repr. Frankfurt am Main: Minerva, 1964), 1: 756–1334, no. 746, p. 571a.

³⁹ For an analysis of the antipope's election, investiture, consecration, and coronation, see Chapters 6.2 and 6.3 of my doctoral thesis.

different. Galvaneus della Flamma, a Milanese chronicler, wrote about the antipope: 'He made a certain Marsilius of Padua archbishop of Milan and appointed many bishops in other cities.'⁴⁰ In order to assess this account it is important to note that Marsilius could never have actually obtained that office since Milan's ruler declared the city independent from the Emperor. A siege of Milan by Ludwig in 1329 was not successful.

Marsilius's appointment as Archbishop of Milan was only rarely believed by scholars;⁴¹ some doubted it,⁴² later on some scholars vigorously denied it,⁴³ and most scholars today just do not mention it. But only one argument was found against della Flamma's revelation. Someone else, scholars have argued, one Giovanni of the Milanese family of the Visconti, was appointed Archbishop of Milan. However, no source mentions this appointment. But Giovanni Visconti was made cardinal legate by the antipope and refers to himself in one documents as 'cardinal of the church of Milan'.⁴⁴ This means, some scholars have argued, that Giovanni Visconti was not only Cardinal of the Roman Church but most likely Archbishop of Milan as well.⁴⁵ Since the antipope would not appoint two

⁴⁰ 'Hic [Nicolaus V.] dedit in Archiepiscopum Mediolanensem quemdam Marsilium Paduanum, multosque Episopos in aliis Civitatibus fecit': Galvaneus della Flamma, 'Manipulus Florum', in *Rerum Italicarum Scriptores*, 11, ed. by Ludovico Muratori (Milan: Societas Palatinae, 1727), chap. 366, col. 732b.

⁴¹ Among the few who believe it are Riezler, *Die literarischen Widersacher*, p. 55, n. 2; Heinrich Otto, 'Zur italienischen Politik Johanns XXII', in *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, 14 (1911), 178, n. 4; *Hierarchia catholica medii aevi, sive summorum pontificum, S. R. E. cardinalium ecclesiarum antistitum series, e documentis tabularii praesertim Vaticani*, 1: *Ab Anno 1198 usque ad annum 1431 perducta*, ed. by Konrad Eubel (Münster: Regensburg, 1913), p. 332, n. 7.

⁴² See Valois, p. 599, n. 1; Brampton, p. 514; Charles William Previté-Orton, 'Editor's Introduction', in Marsilius of Padua, *Defensor pacis*, ed. by Charles William Previté-Orton (Cambridge: Cambridge University Press, 1928), p. xi; Battaglia, pp. 191–93; de Lagarde, p. 35.

⁴³ See Scholz, 'Einleitung', in *DPb*, 1, p. lviii, n. 1: 'sicher Erfindung' [surely fiction]; and Otto Bornhak, *Staatskirchliche Anschauungen und Handlungen am Hofe Kaiser Ludwigs des Bayern* (Weimar: Böhlau, 1933), p. 67, n. 3.

⁴⁴ Aegidius Tschudi, *Chronicon Helveticum*, 2 vols (Basel: Bischoff, 1734–36), 1: 1000–1415 (1734), p. 309; now more easily accessible in Aegidius Tschudi, *Chronicon Helveticum*, part 4, ed. by Bernhard Stettler (Basel: Selbstverlag der Allgemeinen Geschichtsforschenden Gesellschaft der Schweiz, 1983), p. 121, l. 3. For the twisted editing history of this document, see Chapter 7.2.2 of my doctoral thesis.

⁴⁵ See Riezler, *Die literarischen Widersacher*, p. 55, n. 2, who states that Giovanni Visconti was made Archbishop of Milan after Ludwig had deposed Marsilius. However, Riezler

archbishops of Milan at the same time, only one appointment could have occurred. Scholars have decided then to doubt Marsilius's appointment as archbishop since only one historiographical source mentions it.

But della Flamma's revelation is not as doubtful as scholars thought. First of all, a 'cardinal of the church of Milan' refers not to a cardinal of the Roman Church but to a canon of Milan's cathedral.⁴⁶ Thus there is no reason, and no evidence, that Giovanni Visconti was appointed Archbishop of Milan. Nothing stands against the assumption that it was Marsilius who was appointed Archbishop of Milan. However, there are three reasons why della Flamma's statement can be regarded as credible. First, the chronicle of the Milanese della Flamma is very reliable in general. Second, Marsilius had strong relations to Milan for at least ten years; therefore, Milan is quite a likely place for Marsilius to go. Third, Ludwig appointed Marsilius's companion, John of Jandun, Bishop of Ferrara; therefore, it is not unlikely that Marsilius was appointed a bishop as well. The silence of other sources concerning this appointment can be explained by the simple fact that Marsilius never held the office of an archbishop. Only a writer like the Milanese chronicler and cleric Galvaneus della Flamma had both the information and the interest to tell about an appointment that never took effect.

What difference does it make if we believe Marsilius was appointed archbishop of the major city of Lombardy? At the very least we have to revise — I think — the image of Marsilius as a mere counsellor. Marsilius obviously was a person who was interested in offices and power as well.

If we view history not from the end — that is, from the failure of Ludwig's rule in Italy and the resignation of the antipope, but from the time when Marsilius was appointed Archbishop of Milan in Rome, when the antipope was newly crowned, Ludwig was at the height of his power in Italy, and Marsilius was at the height of his influence — this appointment seems to be quite important. The office of archbishop in one of the capitals of the Ghibellines, which Milan was before it changed sides in 1329, would have given Marsilius political power as well. The political importance of this bishopric within the

mentions no reason for Marsilius's deposition. See also Carl Müller, *Der Kampf Ludwigs des Baiern mit der römischen Curie: Ein Beitrag zur kirchlichen Geschichte des 14. Jahrhunderts*, 2 vols (Tübingen: Laupp, 1879–80), 1: *Ludwig der Baier und Johann XXII* (1879), p. 199, nn. 3 and 9.

⁴⁶ See Hans Erich Feine, *Kirchliche Rechtsgeschichte: Die katholische Kirche*, 5th edn (Köln/Wien: Böhlau, 1972), p. 315; the title of cardinal was in use in several other cathedral cities during the middle ages, for example in Naples, Besançon, and Cologne.

hierarchy of the antipope can hardly be overestimated. In addition to the antipope himself and the imperial vicars in northern Italy, it would have been the bishops' task to stabilize the hierarchy of the antipope and the empire.

One more thought might be interesting: Ludwig's successor as Roman king would have been crowned in Milan perhaps by Marsilius of Padua, since it was the right of the Milan archbishop to crown the Roman king with the iron crown of Italy. But the failure of Ludwig's politics in Italy forced Marsilius to spend the rest of his life in Munich, thus concealing the political ambitions of the Paduan philosopher.

THE IMPACT OF MARSILIUS: PAPALIST RESPONSES TO THE *DEFENSOR PACIS*

Thomas Turley

Historians have not given much attention to papalist responses to the *Defensor pacis*. The circumstances of their production imposed a format that has limited their attraction. The earliest were composed to assist Pope John XXII as he prepared *Licet iuxta doctrinam*, the decree that would condemn Marsilius of Padua in October 1327. Published afterward as polemical tracts, these advisory responses reflect the circumstances of their composition. They are formulaic, addressing, in order, six putative errors found in the *Defensor* by curial investigators. Later polemical responses to Marsilius depart from this structure only slightly, replying to the shortened list of errors Pope John published in his decree.¹ All of the respondents adhere closely to the descriptions given in the curial list and *Licet iuxta doctrinam* when outlining Marsilius's errors — an indication that the *Defensor pacis* was unavailable to them as they composed their replies.² The terse list of errors that the respondents

¹ Pope John lists the errors as he proceeds in *Licet iuxta doctrinam*, *Annales ecclesiastici*, ed. by Caesar Baronius, Odorico Rinaldi, and August Theiner (Bar-le-Duc: Ludovicus Guerin, 1880), XXIV, cols 323a–27b, and again at the end of the decree, col. 328b. He uses five of the six errors on the original list. John's description of the process by which the list of errors was drawn up and the theological responses solicited is in note 2, below. Jürgen Miethke, *De potestate papae: Die päpstliche Amtskompetenz im Widerstreit der politischen Theorie von Thomas von Aquin bis Wilhelm von Ockham* (Tübingen: Mohr Siebeck, 2000), pp. 232–35, briefly reviews the papalist response to Marsilius.

² The brevity of the list and the responses to it seems the result of the unavailability of the *Defensor pacis* for inspection. The authorities in Paris apparently destroyed all copies of the work soon after its discovery in 1326. In *Licet iuxta doctrinam*, Pope John admits that the curial examination of Marsilius's teachings was based on reports sent to him regarding 'certain articles'

address is also disappointing, considering the breadth of Marsilius's attack on the Church. It includes only the ecclesiological assertions in the *Defensor pacis* that the curial examiners found to be most damaging to the Roman Church: that emperors hold lordship over all Church goods; that emperors can correct, punish, appoint, and depose popes; that Peter was no more head of the Church than any other apostle; that all priests have the same authority and jurisdiction; that the pope and the Roman Church can exercise no coercive punishment; and that every priest has the same power of absolution as the pope.³ Finally, all the responses are fairly brief, diminutive in comparison with the massive *summae de ecclesia* produced by some supporters of papal authority in the first decades of the fourteenth century.⁴ Despite these apparent drawbacks, however, the responses deserve a closer inspection than they have had. They offer valuable insight into papalist understanding of the nature of Marsilius's attack and the danger that it posed.

In reviewing the papalist responses, most modern commentators have accepted the evaluations of Richard Scholz, who partially edited a significant number in his landmark *Unbekannte kirchenpolitische Streitschriften aus der Zeit Ludwigs des Bayern*, published between 1911 and 1914. Scholz acknowledged some

excerpted from the *Defensor*. The curial list was dependent on these, and the respondents relied upon the list. None of the respondents demonstrate any direct knowledge of the *Defensor*. *Licet iuxta doctrinam, Annales ecclesiastici*, XXIV, col. 323a: 'tandem tam praefati quam plures praelati, necnon et alii viri catholici per perniciosas haereses inter catholicos dogmatizari publice indecens et perniciosum nimium reputantes, nobis certos articulos excerptos de libro praedicto curaverunt nonnulli mittere, ac per seipsos aliqui praesentare, supplicantes attentius, ut super praemissis curarem sanctae Dei ecclesiae de optimo remedio providere: de quibus articulis subscriptos duximus praesentibus annotandos. Et licet tam cum fratribus nostris sanctae Romanae ecclesiae cardinalibus, quam cum archiepiscopis et episcopis aliisque ecclesiarum praelatis, necnon et cum pluribus sacrae theologiae magistris, ac utriusque iuris professoribus deliberationem super ipsis articulis prae habueramus diligentem; ex quorum aperte convincitur, quod errores articulorum ipsorum sunt adeo manifesti.'

³ Several of the responses reproduce the list: William Amidani of Cremona, *Reprobatio errorum*, ed. by Darach Mac Fhionnbhairr, Corpus Christianorum Augustinianorum, 4 (Rome: Augustinianum, 1977), pp. 3–4; Sibert of Beek, *Reprobatio sex errorum*, ed. by Richard Scholz, in *Unbekannte kirchenpolitische Streitschriften aus der Zeit Ludwigs des Bayern (1327–1354)*, 2 vols (Rome: von Loescher, 1911–14), II, 3–4.

⁴ For example, Augustinus Triumphus's *Summa de ecclesia* (1326), Pierre de la Palu's *Tractatus de potestate papae* (1317), and Guillaume de Pierre Godin's *Tractatus de causa immediata ecclesiastice potestatis* (1318).

variety among the respondents' arguments, but presented most as adhering to a relatively uniform papalist position.⁵ Generally speaking, Scholz was interested in the group's conclusions, most of which seem standard assertions of papal authority that offer little that is new. This article takes a different approach. It is concerned with their methods of argument. Marsilius's conclusions are fascinating, but perhaps as interesting are the methods he employed to reach them. His clever adaptation of seemingly unrelated modes of early-fourteenth-century polemic — the secular Aristotelianism of royalists, the appeal to primitive tradition of dissident Franciscans — created a brilliantly coherent and potentially devastating critique of papal power. It seems appropriate to examine the skill of Marsilius's critics in meeting this challenge, both to explore the validity of a common impression that their reaction was pedestrian and to gauge their understanding of the threat presented by the *Defensor pacis*.

The notion that papalist responses to Marsilius were unremarkable seems to have been fostered, at least in part, by the manner in which Scholz organized the responses, and the consequent attention given to one respondent, the Augustinian William Amidani of Cremona. Scholz positioned William's work early in *Unbekannte kirchenpolitische Streitschriften*, probably because it was one of the first responses submitted to Pope John in 1327. He left the impression that the Augustinian was typical of most of the respondents, an academic given to the 'fine distinctions and excurses' (*die feinen Distinktionen und Exkurse*) of the scholastics, and a proponent of extreme and 'far too abstract' (*allzu abstrakt*) ecclesiological views.⁶ But the effect is misleading. William's work is not typical.

⁵ Scholz, I, 13–78. Scholz presents Sibert of Beek as something of an exception, contrasting what he takes to be Sibert's pragmatic approach with the more theoretical stance of other respondents (I, 3–12). Wilhelm Kölmel's evaluation of the responses in his *Regimen Christianum* (1970) alters Scholz's conclusions slightly, noting a bit more variety in the respondents' views and distinguishing moderate from extreme papalists. Kölmel treats the respondents in a chapter on curial polemicists, *Regimen Christianum: Weg und Ergebnisse des Gewaltenverhältnisses und des Gewaltenverständnisses (8. bis 14. Jahrhundert)* (Berlin: Walter de Gruyter, 1970), pp. 422–54. His examination, like Scholz's, centres on responses to the first error on the curial list, Marsilius's claim that the emperor had authority over Church property.

⁶ Scholz, I, 16. See I, 13–22, for Scholz's analysis of William's work; II, 16–28, for his edition. Scholz places only one response before William's, that of the Carmelite Sibert of Beek. He contrasts what he considers the moderation and pragmatism of Sibert's work to the extremism of the other responses (I, 11).

A comparison of his method with that of the other papalist respondents makes this evident.

Only the responses of William of Cremona and the Carmelites Sibert of Beek and Guido Terreni can be placed with any certitude among those delivered to Pope John as he prepared *Licet iuxta doctrinam*.⁷ William's work is the most published, and, for that matter, the longest, of these original responses.⁸ It is also very derivative. A disciple of Giles of Rome, William answered each of Marsilius's perceived errors with pseudo-Dionysian metaphysical arguments typical of Giles's approach. William's method is well illustrated in his response to the first Marsilian error on the curial list, the assertion that all the Church's temporal goods lie under imperial authority. This was clearly an attack on the extreme papalist claim that papal lordship extended to all things, including all temporals. William replies in typical Aegidian fashion, arguing deductively from first principles and reducing all his other arguments — including those from Scripture and patristic authority — to an ancillary role.

William begins with an appeal to the abstract notion of oneness. If all things are one, he declares, the Church must be one, even if the ecclesial body is ostensibly divided into clergy and laity. In the one Church, there must be one authority over temporal goods. This is given to the clergy because they have a higher, spiritual function in the Church, and because temporal goods are tied intrinsically to the spiritual end of humanity. No one, including an emperor,

⁷ William and Sibert respond to the six errors on the list of the curial committee rather than the five that Pope John listed in the decree (Mac Fhionnbhairr, pp. 3–4; Scholz, II, 3–4. Guido responds only to the first error, but uses the form found on the curial list rather than the one in Pope John's decree (Vat. MS lat. 10497, fol. 119^{vb}); Bartomeu Xiberta, 'De magistro Guidone Terreni, priore generali ordinis nostris, episcopo Maioricensi et Elnensi', *Analecta ordinis Carmelitarum*, 5 (1923–26), 113–206 (pp. 188–90). The response survives in this manuscript only; it may be a portion of a longer response that addressed all six of the errors on the curial list. Scholz does not include Guido's work in *Unbekannte kirchenpolitische Streitschriften*.

⁸ The most recent complete edition is that of Mac Fhionnbhairr (see note 4, above). The partial edition in Scholz, II, 16–28, is completed in Antonio Piolanti, *Guglielmo Amidani da Cremona, O.S.A. De primatu Petri et de origine potestatis episcoporum* (Vatican City: Pontificia Accademia Teologica Romana, 1971). See also Ugo Mariani, *Chiesa e Stato nei Teologi Agostini de secolo XIV* (Rome: Edizioni di Storia e Letteratura, 1957), pp. 203–22; Gregorio Piaia, 'Marsilio da Padova, Guglielmo Amidani e l'idea di sovranità popolare', *Veritas*, 38 (1993), 297–304.

possesses anything legitimately unless he has submitted to God, and no one has submitted to God unless he has submitted to the Church.⁹ William then demonstrates deductively the Church's right to the various temporal goods it holds. In the process he makes only a few patristic and scriptural references, none essential to the structure of the argument. He finishes with a review of scriptural and patristic texts that verifies the point he has established, but this section is so brief that the authoritative sources seem an addendum to the deductive argument.¹⁰ William's answers to the other five Marsilian errors named by the curial committee employ the same technique.¹¹

William of Cremona's response was technically impressive, but failed in a vital respect: it did not engage the essence of Marsilius's criticisms of the contemporary Church. Rather, it repeated old arguments that were part of a different discourse, the discussion of the philosophical underpinnings of ecclesiology that was current at the turn of the fourteenth century. Marsilius had attacked these in Discourse I of the *Defensor pacis* — especially the views of William's fellow Augustinians Giles of Rome and James of Viterbo. But the errors the curial committee identified were all from Discourse II and there Marsilius used a very special mode of argument. Discourse II addressed the specifically theological claims that underlay the papalist position, particularly the interpretations of Scripture, the Fathers, and the canons most relied upon by papalists to anchor their position. In attacking these, Marsilius employed not philosophical, but rhetorical and textual techniques. His principal goal was to alter the image of the primitive Church presented in them. By shifting the rules of interpretation, he was able to rearrange, discredit, or reinterpret to his advantage. So, for example, Marsilius claimed to favour literal over difficult figurative readings of Scripture, and gave authority to nonscriptural texts he felt were sufficiently ancient. The simple and powerless institution he was able to evoke with these techniques offered a stark contrast to the wealth and power of the contemporary Church. Marsilius then used the disjunction this created between ancient and current churches to argue for a return to the primitive

⁹ Mac Fhionnbhairr, pp. 5–11.

¹⁰ Mac Fhionnbhairr, pp. 11–20; the section with supporting texts is on pp. 18–20. The rest of this question deals with the ways in which the emperor has authority over temporal goods. Again, some scriptural, patristic, and canonistic texts are included, but they are incidental to the main argument (Mac Fhionnbhairr, pp. 20–38).

¹¹ Mac Fhionnbhairr, pp. 38–101.

ecclesial organization his sources portrayed.¹² An attack like this could not be answered with appeals to deductive argument.

Marsilius's image of the primitive Church was the key to his approach. It was the touchstone, the 'authority symbol', which he used to evaluate the contemporary Church. His approach here was inspired by contemporary Franciscan dissidents. Embracing the notion of an ideal primitive Church and emphasizing its traditional attributes of poverty and simplicity, these Franciscans had thrown into question the authenticity of the contemporary Church's reading of sources about Christian perfection and ecclesiastical order. Further, they altered the focus commonly used in reading authoritative texts on the nature of the Church. They discounted sources that weakened their position and augmented the importance of those that strengthened it. Thus they were able to question the absoluteness of Petrine authority while exalting their own interpretation of the primitive Church and their image of themselves as faithful imitators of apostolic perfection. Marsilius followed their lead, discarding erstwhile historical sources, emphasizing others that suited his purpose, ignoring figurative interpretations of texts common in papalist argument, and refashioning the context of ecclesiastical tradition.¹³

To be effective, a papalist reply to the *Defensor pacis* had to address all of these methodological and rhetorical challenges. The response of William of Cremona obviously did not. But William is not typical of Marsilius's critics. More representative of papalist response are the works of the other two curial theologians we know advised Pope John as he prepared *Licet iuxta doctrinam*, the Carmelites Guido Terreni and Sibert of Beek. Master and student, they shared

¹² See Conal Condren, 'Marsilius of Padua's Argument from Authority: A Survey of Its Significance in the *Defensor pacis*', *Political Theory*, 5 (1977), 205–18; and idem, 'Rhetoric, Historiography, and Political Theory: Some Aspects of the Poverty Controversy Reconsidered', *Journal of Religious History*, 13 (1984), 15–34. Also David Carr, 'The Use and Image of History in *Defensor pacis*', in *Altro Polo: A Volume of Italian Renaissance Studies*, ed. by Conal Condren and Roslyn Pesman Cooper (Sydney: University of Sydney, 1982), pp. 13–28.

¹³ See especially Kerry Spiers, 'The Ecclesiastical Poverty Theory of Marsilius of Padua: Sources and Significance', *Il pensiero politico*, 10 (1977), 3–21, as well as the following articles from *Medioevo: Rivista di storia della filosofia medievale*, 6 (1980): Spiers, 'Pope John XXII and Marsilius of Padua on the Universal Dominion of Christ: A Possible Common Source', 471–78; Louise S. Handelman, '"Ecclesia primitiva": Alvarus Pelagius and Marsilius of Padua', 431–48; Marino Damiani, 'Funzione e concetto della povertà evangelica in Marsilio da Padova', 411–30; and Gian Luca Potestà, 'Marsilio e Ubertino da Casale', 449–66.

a common attitude toward ecclesiological issues. Their responses to Marsilius are direct and powerful.

Guido Terreni was a favoured adviser of John XXII. One of the primary defenders of the Pope against Franciscan dissidents in the early 1320s, he served on several important curial committees during that decade, including the one that examined William of Ockham's views. He seems to have had a good deal of influence with the Pope.¹⁴ His reply to the first error on the curial list is all we have of his *responsio*, but it is enough to illustrate his approach to the questions Marsilius raised.¹⁵

The first Marsilian error cited by the curial committee was the assertion that all ecclesiastical goods lie under secular authority. In answering, Guido makes some clear rhetorical choices; he keeps to textual arguments and focuses his attention on the situation of the early Church. He begins by affirming that the error is indeed a heresy, and not a new one. It has, in fact, recurred throughout Jewish and ecclesiastical history; Pharaoh, Nebuchadnezzar, and the Roman emperor Valentinian all embraced it. Guido offers a string of scriptural and patristic texts to demonstrate this historical claim, and then shifts to the example of Christ and the apostles in the primitive Church. Christ carried a moneybag; in it was the wealth of the Church. He used the money to take care of the Church's needs, and consequently that money belonged to God.¹⁶ It was beyond the authority of anyone else. Guido turns briefly to an Aristotelian argument to emphasize the natural necessity of essential Church possessions like the moneybag and the natural superiority of spiritual to temporal things, but quickly shifts back to scriptural and patristic evidence, much of the latter pulled from the canons of the *Decretum*, to demonstrate that Church property continued to be free from secular control throughout the early history of the Church. All the authoritative texts Guido cites are read literally. He offers no metaphorical interpretations. Guido relies on the simple

¹⁴ Bartomeu Xiberta, *Guiu Terrena, Carmelita de Perpinyà* (Barcelona: Institució Patxot, 1932), pp. 67–78. Also Brian Tierney, *Origins of Papal Infallibility, 1150–1350*, 2nd edn (Leiden: Brill, 1988), pp. 238–69; Thomas Turley, 'Guido Terreni, Heresy, and the Reconstruction of Tradition: 1317–1342', in *Tradition and Ecstasy: The Agony of the Fourteenth Century*, ed. by Nancy Van Deusen, Claremont Cultural Studies (Ottawa: Institute of Medieval Music, 1997), pp. 51–68.

¹⁵ The response, *Confutatio errorum quorundam magistrorum*, survives in a single manuscript in Vat. MS lat. 10497, fols 119^{ra}–24^{vb}. It is described in Xiberta, *Guiu Terrena*, p. 75.

¹⁶ Vat. MS lat. 10497, fols 119^{va}–20^{vb}.

and straightforward witness of the texts describing the history of primitive ecclesiastical practice to make his point.¹⁷

Unlike William of Cremona and other Aegidians, Guido does not claim that the Church has authority over all temporal goods. A moderate on ecclesiastical dominion, he distinguishes possessions necessary for maintaining the *status ecclesiae* from goods extrinsic to the Church's mission. He further distinguishes two kinds of extrinsic goods: those transferred to Church possession but still under imperial authority and taxation, and the lands given by Constantine, which are entirely free of imperial control. Again he supports his argument with literal readings of the Scriptures and the Fathers. The patristic texts are drawn primarily from the canons, but Guido's readings are augmented by a thorough knowledge of the original patristic works.¹⁸ So, for example, he establishes the context of C. 23 q. 8 c. 21, *Convenior*, which is composed of a few paragraphs edited from Ambrose's classic letter condemning imperial interference with the Church's possessions, by quoting the letter at length.¹⁹ Guido finishes with an elaborate refutation of Marsilius's key argument, an interpretation of Christ's payment of the tribute in Matthew 17. 23–26 that relies on a literal reading of the text and a very complete knowledge of patristic exegesis — especially the works of Jerome, Augustine, and Chrysostom. His primary tactic is to quote extensive passages from the Fathers, not just the brief citations found in the canons, in order to clarify the meaning of the canonical texts and demonstrate how thoroughly Marsilius is at odds with these most revered of scriptural commentators.²⁰

To a remarkable degree, Guido may be said to answer Marsilius in kind. Throughout his response, Guido relies on the same kind of evidence Marsilius does — literal readings of scriptural and patristic texts, and (very briefly) the philosophical authority of Aristotle. With the first he establishes the continuity of Church practice, with the second the appropriateness and naturalness of the current ecclesiastical structure. He obviously seeks to establish the error of Marsilius's interpretation of key texts and the correctness of his own understandings. But he is as concerned to show the complete agreement of the early Church with the Avignon Church on every matter of doctrine and practice

¹⁷ Vat. MS lat. 10497, fols 120^{vb}–21^{va}.

¹⁸ Vat. MS lat. 10497, fols 121^{vb}–22^{ra}.

¹⁹ Vat. MS lat. 10497, fol. 123^{ra}.

²⁰ Vat. MS lat. 10497, fols 123^{va}–24^{vb}.

that Marsilius contested.²¹ He seems quite aware that the greatest danger of the *Defensor pacis* was its claim that the contemporary Roman Church had lost the traditions of the primitive Church.

The other Carmelite who advised Pope John in the preparation of *Licet iuxta doctrinam* is Sibert of Beek, a one-time student of Guido Terreni.²² Sibert's response also relies on techniques of argument rather similar to those used by Marsilius, particularly at those places where he finds it necessary to demonstrate that the primitive Church was, in fact, quite like the contemporary Church.²³ But Sibert handles his sources a bit differently. Rather than select a few key texts, as Guido does, Sibert piles up his authorities, especially on the matter of the continuity of ecclesial practice, sometimes juxtaposing the words of a Church Father with those of a recent pope to underline his point.²⁴ Even more than Guido, Sibert adheres to the modes of argument Marsilius claimed to value. He keeps to literal readings of the Scriptures, the Fathers, and the canons, and chooses only witnesses to Church practice whom his contemporaries believed were present for what they witnessed.²⁵ Thus he uses the New Testament and the Fathers only to verify the situation of the early Church, while later authors are restricted to testifying about the belief and practice of the Church in their own time. The result is intended to demonstrate Church practice over time.²⁶ The

²¹ So in defending the immunity of ecclesiastical property, he cites a cluster of texts in *Causa* 23 of the *Decretum* that witness the Church's assertion of this right from the fourth through the twelfth centuries (Vat. MS lat. 10497, fol. 121^{va}).

²² On Sibert, Bartomeu Xibert, *De scriptoribus scholasticis saeculi XIV ex ordine Carmelitarum*, Bibliothèque de la Revue d'Histoire Ecclésiastique, 6 (Leuven: Bureaux de la Revue, 1931), pp. 142–66; Franz-Bernard Lickteig, *The German Carmelites at the Medieval Universities* (Rome: Institutum Carmelitanum, 1981), pp. 34–36, 122–29, 174–78. Sibert studied with Guido when the latter taught at Paris in the 1310s.

²³ Later entitled *Reprobatio sex errorum*, it is partially edited by Scholz, II, 3–15; the only extant manuscript is Vat. MS lat. 5709, fols 110^{va}–19^{ra}.

²⁴ To verify that emperors were guilty of sacrilege if they seized Church goods, Sibert cites a string of popes running from the primitive Church to the Avignon Church; later he uses the words of four Church Fathers, a general council, an early pope, and a succession of emperors from different eras to attest papal authority (Vat. MS lat. 5709, fols 112^{vb}, 116^{ra}–17^{ra}).

²⁵ On late medieval attitudes to past texts, see Janet Coleman, *Ancient and Medieval Memories: Studies in the Reconstruction of the Past* (Cambridge: Cambridge University Press, 1992), p. 596.

²⁶ For example, the cluster of canons he chooses to substantiate his claim that the emperor has a relative authority over Church goods in that he is their protector spans the third to the ninth centuries (Vat. MS lat. 5709, fol. 111^{ra}).

pattern is too consistent to be accidental. And the sheer number of texts he lays out creates a sense of overwhelming evidence. Stringing these groups of sources together, Sibert is able to create convincing little histories of the doctrines he discusses, and to impart a powerful assurance of historical continuity in belief and practice where Marsilius asserted confusion and dissimulation. Sibert acknowledges that Marsilius's claims, if true, damn the Church to error for most of its history. He responds that the sources he is citing exonerate the Church both in the past and in the present.²⁷ In many ways, Sibert's work is even more convincing than Guido's. Perhaps the reason is that he had more experience working with this kind of source material than Guido. Early in his career Sibert had made a reputation for himself by editing important collections of Carmelite foundation documents and papal decrees that demonstrated the antiquity of the order, as well as an ordinal of primitive Carmelite liturgy.²⁸ He treats the canons similarly.

The impact of Guido's and Sibert's work is difficult to determine. Another of the papalist controversialists who attacked Marsilius in the wake of *Licet iuxta doctrinam*, Peter of Kaiserslautern, used many of the same texts and general arguments Guido did, in approximately the same order — including the references to Aristotle.²⁹ He seems to have borrowed from Guido's work. Pope

²⁷ Vat. MS lat. 5907, fol. 116^{va}: 'Secundo confirmo questionem supradictam ex toto decursu ecclesie a tempore beati Petri usque nunc. Omnes enim Romani principes, successores Petri, se gerebant ut vicarios Christi super Romanam ecclesiam, quorum valde multi enumerati sunt in sanctorum cathologo; mens ergo sana non capit, quod hii omnes erraverint et totus decursus ecclesie usque nunc a Christo derelictus fuerit': Scholz, II, 12. Nine years before Sibert wrote these words, Guido Terreni observed that the Spiritual Franciscans' claim that the Apostolic Church observed absolute poverty denied the Church perfection for most of its history, that is, from the time of the apostles to the time of St Francis. *Reprobatio operis catolonicis*, ed. by José Pou and Martí, *Visionarios, Beguinos y Fraticellos catalanes (siglos XIII–XIV)* (Vich: Editorial Seráfica, 1930), pp. 502–03.

²⁸ Sibert of Beek, *Annotatio capitulorum generalium*, ed. by Benedict Zimmerman, in *Monumenta historica Carmelitana*, 2 vols (Lirinae: Ex typis Abbatiae, 1907), I, 190–202; idem, *Considerationes super Regulam ordinis Carmelitarum*, ed. by Gabriel Wessels, in 'Sibertus de Beka, Considerationes super Regulam ordinis Carmelitarum', *Analecta ordinis Carmelitarum*, 3 (1914–16), 218–23; idem, *Ordinaire de l'ordre de Notre-Dame du Mont Carmel, par Sibert de Beka (vers 1312)*, ed. by Zimmerman (Paris: Alphonse Picard, 1910). See Xiberta, *De scriptoribus scholasticis*, pp. 147–48, on these and another work by Sibert, the *Bullarium Carmelitarum*.

²⁹ *Tractatus contra prefatum Michaellem de Cesena et socios eius*, ed. by Scholz, II, 29–42 (see note 3, above). Despite the title, the portion of the work that is preserved attacks Marsilius, not Michael of Cesena. On Peter's life and works see Scholz, I, 22–27.

John devoted a significant section of *Licet iuxta doctrinam* to the misuse of history by Marsilius and to correction of the misinterpretation of a number of canons describing the relationship of emperors to popes.³⁰ This may have been prompted by the works of Guido and Sibert. And when John enumerated Marsilius's errors, he included the first five the curial committee had identified, but left out the sixth. Sibert of Beek had advised the same in his response.³¹

All of the other papalist responses to Marsilius that survive seem to have been written after the publication of *Licet iuxta doctrinam*. Like Guido and Sibert, these authors were concerned to clarify the meaning of the authorities that Marsilius employed. However, few addressed his challenge to conventional understandings of ecclesiastical tradition and history. The anonymous author of the *Compendium maius octo processuum papalium* (1328) is not primarily interested in Marsilius, but in the seeming alliance of Marsilius, the excommunicated German emperor Louis of Bavaria, and the dissident Franciscan leader Michael of Cesena.³² He concentrates on the Emperor's slide into heresy, his eventual union with these other heretics, and John XXII's condemnations, and offers no further demonstration of Marsilius's error than a summary of Pope John's statement in

³⁰ 'Preterea legant homines isti pestiferi historias approbatas, et ostendant quis unquam papa Catholicus ab imperatore institutus fuerint': *Licet iuxta doctrinam, Annales ecclesiastici*, XXIV, cols 325a–b. In response to Marsilius's errors regarding the authority and jurisdiction of the clergy and the Church's right to punish coactively, John offers descriptions of the establishment of the ecclesiastical hierarchy and its right to punish in the primitive Church; see cols 326a–8a. He shows no interest in William of Cremona's style of argument.

³¹ *Licet iuxta doctrinam, Annales ecclesiastici*, XXIV, cols 323a–27b. Sibert had advised that the sixth error on the curial list was redundant, as it was implied in the fourth error in Vat. MS lat. 5709, fol. 119^{ra}; cf. Scholz, II, 15.

³² In 1326, Marsilius accepted the protection of Louis of Bavaria; in 1327, Louis captured Rome and later elected an antipope; in 1328, the minister general of the Franciscan order, Michael of Cesena, had launched a polemical war against Pope John from the safety of Louis's court. Martin Berg, 'Der Italienzug Ludwigs des Bayern. Das Itinerar der Jahre 1327–1330', *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, 67 (1987), 142–97; Jürgen Miethke, 'Wirkungen politischer Theorie auf die Praxis der Politik im Römischen Reich des 14. Jahrhunderts: Gelehrte Politikberatung am Hofe Ludwigs des Bayern', in *Political Thought and the Realities of Power in the Middle Ages/Politisches Denken und die Wirklichkeit der Macht im Mittelalter*, ed. by Joseph Canning and Otto-Gerhard Oexle (Göttingen: Vandenhoeck and Ruprecht, 1998), pp. 173–210. On the Franciscans, John Moorman, *A History of the Franciscan Order from Its Origins to the Year 1517* (Oxford: Oxford University Press, 1968), pp. 317–32; Decima Douie, *The Nature and Effect of the Heresy of the Fraticelli* (Manchester: Manchester University Press, 1932), pp. 166–201.

Licet iuxta doctrinam.³³ Lambert Guerrici of Huy replies to the doctrines of both Marsilius and the dissident Franciscans in his highly rhetorical *Liber de commendatione Johannis XXII* (September 1328) with fairly brief arguments that lean heavily on common canonistic interpretations and the example of contemporary Church practice.³⁴ Lambert does touch on the historical situation of the early Church when discussing Marsilius's teachings on the relation of the priestly and royal authorities and the practices of the primitive Church, and even admits differences between the ancient and contemporary churches, but dismisses these with a conventional reference to the canonistic doctrine of ecclesial maturation.³⁵ There is no sign of William of Cremona's deductive approach in Lambert's arguments, but neither is there much similarity to the method employed by Guido Terreni and Sibert of Beek. Rather, Lambert simply restates canonistic interpretation of the sources.

Several other respondents also show a preference for the doctrines of the canonists. The canon lawyer Aegidius Spiritualis uses arguments derived from the Decretalists. Aegidius, like Lambert, is content to restate proper doctrine. He surprises only in condemning as heretics the influential Decretists Johannes Teutonicus and Huguccio for their moderate views on the extent of papal authority. According to Aegidius, the teachings of these two Decretists lie at the root of most of the errors of figures like Marsilius.³⁶ Alvarus Pelagius, a Franciscan canonist

³³ *Compendium maius octo processuum papalium*, ed. by Scholz, II, 169–87 (pp. 183–85 treat Marsilius) (see note 3, above).

³⁴ *Liber de commendatione Johannis XXII*, ed. by Scholz, II, 154–68 (see note 3, above). On the canonistic approaches, see Kenneth Pennington, *Pope and Bishops: The Papal Monarch in the Twelfth and Thirteenth Centuries* (Philadelphia: University of Pennsylvania Press, 1984); idem, *The Prince and the Law: Sovereignty and Rights in the Western Legal Tradition* (Berkeley: University of California Press, 1993), pp. 38–118. Also John A. Watt, *The Theory of Papal Monarchy in the Thirteenth Century: The Contribution of the Canonists* (New York: Fordham University Press, 1965); Brian Tierney, *Foundations of the Conciliar Theory* (Cambridge: Cambridge University Press, 1955); and Jürgen Miethke, 'Geschichtsprozess und Zeitgenössisches Bewusstsein — Die Theorie des monarchischen Papsts im hohen und späteren Mittelalter', *Historische Zeitschrift*, 226 (1978), 564–99.

³⁵ *Liber de commendatione Johannis XXII*, II, 158–61. On the notion of ecclesial maturation among the canonists, see Glenn Olsen, 'The Idea of the "Ecclesia Primitiva" in the Writings of the Medieval Canonists', *Traditio*, 25 (1969), 61–86.

³⁶ *Libellus contra infideles et inobedientes rebelles sancte Romane ecclesie ac summo pontifici*, ed. by Scholz, II, 105–29 (see note 3, above) (Aegidius's comments on Johannes Teutonicus and Huguccio are on pp. 111–16).

loyal to John XXII, also relies on the Decretalists. The chapter on Marsilius in his *De statu et planctu ecclesiae* (c. 1332) responds with ample summary of the Decretalist position on papal authority.³⁷ Alvarus's discussion of certain issues, especially the poverty of the primitive Church and Christ's granting of authority to Peter, does become a kind of historical review of early Church practice. But he never shows any awareness that the continuity of ecclesiastical doctrine or the authenticity of the texts he cites so confidently have been questioned by Marsilius's doctrines.³⁸ Alvarus, like Aegidius Spiritualis, seeks only to reclaim the correct interpretation of the canonistic sources.

The secular cleric Opicinus de Canistris gets a little closer to the approach of Sibert and Guido. The first part of his *De preeminencia spiritualis imperii* (October 1328) responds to a list of errors approximating those in *Licet iuxta doctrinam* with an amalgam of arguments drawn essentially from Decretalist discourse on papal authority, but the latter part of the work reviews scriptural and patristic authorities. Here Opicinus insists that the Scriptures be read literally, as many heresies have arisen from interpreting them *spiritualiter*, and that great care be taken in interpreting the patristic sources, as times and contexts change.³⁹ And some of Opicinus's responses review aspects of ecclesiastical history. Although they are primarily attempts at correction of interpretation rather than the broader demonstrations of continuity of doctrine and tradition undertaken by Sibert and Guido, they do acknowledge the development of Church practice over time. Opicinus cites the conventional canonistic principle of necessity to explain the changes.⁴⁰ In contrast, the secular

³⁷ Alvarus Pelagius, *De statu et planctu ecclesiae*, II, 68, ed. by Miguel Pinto de Meneses, 5 vols (Lisbon: Instituto Nacional de Investigação Científica, 1988–91), V, 346–50.

³⁸ Alvarus Pelagius, *De statu et planctu ecclesiae*, I, 68, ed. by Pinto de Meneses, V, 322–54. Alvarus was anxious to distinguish his own vision of an absolutely poor primitive Church from the somewhat similar notion proposed by Marsilius. See Louise Handelman, "Ecclesia Primitiva", 431–48; Handelman provides an extensive bibliography. Alvarus also treats Marsilius's errors in a much briefer fashion in his *Collyrium fidei adversus haereses*, V, 1–3, ed. by Pinto de Meneses, 2 vols (Lisbon: Instituto de Alta Cultura, 1954–56), II, 24–34.

³⁹ *De preeminencia spiritualis imperii*, ed. by Scholz, II, 101 (see note 3, above).

⁴⁰ *De preeminencia spiritualis imperii*, ed. by Scholz, II, 89–101. On canonistic appeal to the principle of necessity, see Gaines Post, *Studies in Medieval Legal Thought* (Princeton: Princeton University Press, 1964), pp. 241–309. Pennington, *The Prince and the Law*, pp. 109–10, notes Opicinus's decision to use necessity to explain papal alteration of Church practice rather than the more radical *potentia absoluta*. See also Eugenio Randi, 'La vergine e il papa: "Potentia absoluta" e "Plenitudo potestatis" papale nel XIV secolo', *History of Political Thought*, 5 (1984), 433–34.

Peter of Kaiserslautern, who seems to have based his response on Guido Terreni's, changes the thrust of Guido's arguments considerably in his *Tractatus* (1328). Like the majority of papalist respondents, he is primarily concerned to correct misinterpretations of individual texts and explain proper doctrine. He seems oblivious to the questions of historical continuity that Guido tried to address.⁴¹

The influence of Decretalist ecclesiology among most of these later respondents to Marsilius may have something to do with their unwillingness to engage the issue of continuity of Church practice. Although only two are verified to have had training in canon law, they all show familiarity with the arguments and authoritative texts commonly cited by Decretalist authors. This is not unusual. Guides such as the ordinary gloss on the *Decretum*, Guido of Baysio's *Rosarium*, and William of Pagula's *Summa summarum* had made canonistic ecclesiology accessible to nonspecialists by the early fourteenth century.⁴² Guido Terreni and Sibert of Beek used them, drawing on the moderate views of the Decretists.⁴³ But many of their fellow Curialists preferred the extreme papalism of the Decretalists. And the emphasis on the absolute, self-verifying authority of the pope in Decretalist theory may have induced these writers to direct the bulk of their response to Marsilius toward a simple reassertion of the Decretalist interpretation of the authoritative texts and the framework of argument that underlay it. The Decretalists' claim that popes could alter most matters of Church practice whenever they saw the need left their followers relatively unconcerned about differences between the primitive and the contemporary church.⁴⁴ A few of these authors did acknowledge the problem of the primitive Church and the shifts in the Church's relation to civil authority over the centuries, but none really confronted the question of continuity of doctrine. The

⁴¹ Peter muddles the list of Marsilius's errors, creating several out of the material that Guido Terreni included in his response to the first. *Tractatus contra prefatum Michaelem de Cesena et socios eius* (1328), ed. by Scholz, II, 29–42, especially pp. 30–32 (see note 3, above). It is unlikely Peter had seen *Licet iuxta doctrinam* when he composed this response.

⁴² Tierney, *The Idea of Natural Rights: Studies in Natural Rights, Natural Law, and Church Law* (Atlanta: Scholars Press, 1997), p. 54; Pennington, *The Prince and the Law*, pp. 38–118.

⁴³ See Tierney, *Origins of Papal Infallibility*, pp. 264–68, on Guido's use of the ordinary gloss and Huguccio's commentary.

⁴⁴ See, for example, the argument of Opicinus de Canistris (see note 40, above); also John Baconthorpe (see note 49, below).

two Carmelites clearly saw the problem quite differently from many of their fellow papalists.⁴⁵

This is not quite true of two final respondents to Marsilius, Hermann von Schildesche and John Baconthorpe. Hermann, an Augustinian, devoted a substantial tract to Marsilius soon after his condemnation. Hermann treats Marsilius's errors as denials of traditional teachings on ecclesiastical immunity and jurisdiction, and argues, much like Guido Terreni, that the Church's position is based in both reason and history.⁴⁶ Hermann's work is noteworthy in that he avoids the Aegidian style of argumentation typical of his fellow Augustinians. Rather, he blends arguments from reason and authority.⁴⁷ The structure smacks of the Aegidian approach, proceeding systematically from *ratio* to *ratio*, but Hermann fills each argument with patristic and canonistic texts, and achieves some of the same impact as Guido and Sibert, vindicating the traditional authorities by showing their agreement with reason.

John Baconthorpe approaches Marsilius from a point halfway between the Decretalists and Sibert of Beek. Another Carmelite, Baconthorpe too was a student of Guido Terreni.⁴⁸ He responds to Marsilius in his *Postilla in Matthaem*, composed between 1336 and 1340. Like Sibert and Guido, he knows the canons very well; unlike them, however, he accepts the teachings of the

⁴⁵ For example, Opicinus de Canistris, *De preeminencia spiritualis imperii*, ed. by Scholz, II, 94–96, 100 (see note 3, above); Aegidius Spirituality, *Libellus contra infideles*, ed. by Scholz, II, 108–09. See also the responses to Louis of Bavaria's edict *Gloriosus Deus* (April 1328) by Andreas de Perusio and Franciscus Toti, two Franciscans loyal to Pope John, ed. by Scholz, II, 64–75, 76–88. On Marsilius's attempts to co-opt the authoritative texts of his opponents, see Condren's 'Marsilius of Padua's Argument from Authority', 207–14, and 'Authorities, Emblems, and Sources: Reflections on the Role of a Rhetorical Strategy in the History of History', *Philosophy and Rhetoric*, 15 (1982), 170–86.

⁴⁶ Hermann von Schildesche, *Tractatus contra haereticos negantes immunitatem et iurisdictionem sanctae ecclesiae*, ed. by Adolar Zumkeller (Würzburg: Augustinus-Verlag, 1970), pp. 3–108. On Hermann's life and work, see Zumkeller, *Hermann von Schildesche O. E. S. A. (+ 8. Juli 1357)* (Würzburg: Augustinus-Verlag, 1957).

⁴⁷ For example, see Hermann von Schildesche, *Tractatus*, I, 1, p. 6: 'Contra quos per viam rationis primo, deinde per auctoritates sacrae scripturae procedendum esse videtur, ut eis satisfiat, qui se rationi inniti falso credunt, licet in moribus ecclesiae auctoritas praecedat rationem.'

⁴⁸ On Baconthorpe's life and works, see Xiberta's *De scriptoribus scholasticis*, pp. 167–240, and 'De magistro Johanne Baconthorpe O. Carm', *Analecta ordinis Carmelitarum*, 6 (1927–29), 3–128, 516–25; Nilo di S. Brocardo, 'Il profilo storico di Giovanni Baconthorpe', *Ephemerides Carmeliticae*, 2 (1948), 431–543; Chrysogone du S. Sacrement O. C. D., 'Maître Jean Baconthorpe: les sources, la doctrine, les disciples', *Revue-néo-scholastique de philosophie*, 34 (1932), 341–65.

Decretalists. Consequently, Baconthorpe's papalism is more extreme. He never argues that the pope has supreme temporal power throughout the world, but he does claim that Christian laymen get their property rights from the Church. Temporal goods, he affirms, were kept in common by the primitive Church under the stewardship of the apostles. This was the primitive rule of the entire Church. Over time, various groups within the Church were allowed to possess goods privately, but only as necessity dictated. The dispensing power of the popes authorized these changes as relaxations of the primitive rule. Having granted the relaxations, Baconthorpe declares, the popes can reclaim control of all temporals from the laity at any time.⁴⁹

Baconthorpe directly addresses the errors of Marsilius in his exegesis of Matthew 17. 23–26, the passage on Christ's payment of the tribute. Like most of the other respondents, Baconthorpe prefers literal interpretation of the Scriptures. After repeating the arguments John XXII put forward in *Licet iuxta doctrinam*, he uses both the canons and Decretalist commentary, especially the views of Innocent IV and Hostiensis, to demonstrate that Church property is divinely instituted and has always been exempt from secular interference.⁵⁰ Because his notions are so firmly rooted in the doctrines of the Decretalists, Baconthorpe employs their thought almost exclusively to interpret the scriptural and patristic passages he cites. Here he departs from Guido Terreni and Sibert of Beek, who were careful not to cite recent opinion in their responses (with the exception of a few papal decisions). But his purpose is ultimately the same. Like his fellow Carmelites, he asserts consistency in belief and practice between the Apostolic Church and the contemporary Church. He sees a close consonance between the Scriptures and the views of the canonists, and his commentary is intended to demonstrate it.⁵¹

Though they differ in their willingness to engage the question of continuity in ecclesiastical tradition, the papalist responses to the *Defensor pacis* display considerable uniformity in their general approach. Other than William of

⁴⁹ Beryl Smalley, 'John Baconthorpe's Postill on St Matthew', in *Studies in Medieval Thought and Learning* (London: Hambledon Press, 1981), pp. 249–343; Thomas Turley, 'Tradition, Papal Power, and John Baconthorpe', *Bulletin of Medieval Canon Law*, 12 (1982), 81–89; and Walter Ullmann, 'John Baconthorpe as a Canonist', in *Church and Government in the Middle Ages: Essays Presented to C. R. Cheney*, ed. by Christopher N. L. Brooke (Cambridge: Cambridge University Press, 1976), pp. 223–46.

⁵⁰ Smalley, pp. 319–38.

⁵¹ Smalley, pp. 307, 340.

Cremona, all of the authors rooted their defence of the papacy in the authoritative texts of the canons, Scriptures, and Fathers. They had not read Marsilius's work, but even the sketch of his arguments in curial and papal summaries made the nature of his attack quite evident. Contemporary trends in ecclesiology had prepared them for it. Marsilius was imitating recent Franciscan and secular controversialists when he manipulated the Scriptures, canons, and Fathers to fashion Discourse II of the *Defensor*.⁵² His adaptation of this technique was brilliant and radical, but the mode of argument itself was not totally new. Papalists had been contending with it for some years when the *Defensor pacis* appeared, and had developed methods of response that answered in kind.⁵³ The *Defensor*, and the papalist replies, can be seen as part of a larger discussion that extended through the first decades of the fourteenth century. The papalist responses were conditioned by these recent disputes. Even without the *Defensor* before them, papalists understood the bases of Marsilius's argument. Moreover, they were familiar with the most effective modes of response. The key, they knew, was to focus on the authoritative texts that were being co-opted.

In the wake of *Defensor pacis*, defenders of the papacy worried about the source of this kind of error. Some scanned conventional commentaries on the Scriptures and canons in search of the inspiration for their opponents' heresies. Opicinus de Canistris called for an awareness of context in reading the patristic sources, as times change and error is easy. He also cautioned against anything but literal reading of the Scriptures, as many heresies have risen from 'spiritual' interpretations. Aegidius Spiritualis thought his opponents' heresies were rooted in the commentaries of none other than the distinguished canonists Huguccio and Johannes Teutonicus. John Baconthorpe had similar concerns. His postil on the Gospel of Matthew and commentary on Augustine's *De civitate Dei* were composed to correct frivolous and misleading interpretations by seemingly

⁵² As Guido Terreni observed when he reviewed the teachings of the Spirituals (see note 27, above).

⁵³ For example, during the controversies with the seculars, Pierre de la Palu, *Tractatus de potestate papae*, ed. by Prospero T. Stella (Zürich: Pas-Verlag, 1966); Guillaume de Pierre Godin, *Tractatus de causa immediata ecclesiastice potestatis*, ed. by William D. McCready (Toronto: Pontifical Institute of Medieval Studies, 1982). These were published c. 1317–18, during a sharp exchange between papalists and secular clergy. During the poverty controversy, Bonagratia of Bergamo, 'Tractatus de Christi et apostolorum paupertate', ed. by Livarius Olier, *Archivum Franciscanum Historicum*, 22 (1929), 292–335; Guido Terreni, *De perfectione vitae*, Avignon MS, bibliothèque municipale, 299, fols 1^r–77^v. Both were produced in 1322–23.

orthodox contemporaries.⁵⁴ He apparently published a number of other scriptural postils with similar intent.⁵⁵ Guido Terreni and Sibert of Beek were clearly conscious of the problem too. Guido took a dramatic step to solve it shortly after writing his response to Marsilius: he began two massive works intended to correct erroneous modern interpretations of the Gospels and the canons. They took ten years to complete. Guido's gospel harmony was meant to revive the biblical exegesis of the Fathers; his commentary on the *Decretum* corrected not only dangerous theological blunders by the canonists, but even misreadings of authoritative texts embedded in the work by Gratian himself.⁵⁶

If Marsilius's attacks on the Roman Church were not the only reason these defenders of the papacy grew alarmed at the potential errors hidden in seemingly orthodox commentary, they apparently did serve as a catalyst for serious action. Marsilius's radical exploitation of contemporary ecclesiological controversy and its methods of debate, especially in the service of a powerful enemy like Louis of Bavaria, seems to have left discerning papalists intensely aware of the vulnerability of tradition and its sources. While most respondents to Marsilius were content simply to reassert the papalist position and its interpretation of doctrinal sources, at least a few moved beyond this to confront the problems with tradition that Marsilius had raised, and further, to re-examine the presentation of doctrine in their time.

⁵⁴ Smalley, pp. 306–19, 340; Eugenio Randi, 'Baconthorpe politico. Il commento a "De civitate Dei" XIX dal ms. parigino lat. 9540', *Acme*, 35 (1982), 127–52.

⁵⁵ These are now lost (Smalley, p. 292).

⁵⁶ Guido explains these purposes in the dedications to the works: *Concordia evangelica*, ed. by Johann Seiner (Cologne: Peter Brachel, 1631), pp. 1–2; *Commentarium super Decretum*, Vat. MS lat. 1453, fol. 1^{ra-b}.

‘THE KING OF THE LOCUSTS WHO
DESTROYED THE POVERTY OF CHRIST’:
POPE JOHN XXII, MARSILIUS OF PADUA,
AND THE FRANCISCAN QUESTION

Gabrielle Gonzales

A study of Marsilius of Padua’s *Defensor pacis* offers valuable insight into the outcome of the poverty controversy within the Franciscan order and the subsequent battles between the friars and Pope John XXII. The Pope approached the Franciscan issue from a theological standpoint, motivated by genuine concern for the spiritual welfare of the Church and the Franciscan order, but he was limited by a lack of theological training and he possessed an unaccommodating personality. To remain true to the Franciscan Rule the Friars Minor should have embraced John’s reforms regarding their practice of perfect poverty, but instead they turned the Pope’s own arguments against him, decrying him as a heretic. When they allied with Louis IV of Bavaria the friars gained a strong weapon with the Paduan polemicist who helped vilify the Pope’s character, creating an image that has lasted through the centuries. Marsilius’s work cannot be fully comprehended apart from this context, as his words acted as counterpoints to John’s bulls, effectively neutralizing *Cum inter nonnullos* and forcing John to deal with these issues on a secular level, which was a battle he could not win. The destruction of Pope John XXII’s reputation remains as a lasting reminder of the power of the pen.

For almost seven centuries Pope John XXII has worn the villain’s hat in the Franciscan story. He is the pope who destroyed Franciscan poverty with his infamous bull *Cum inter nonnullos* in 1323. Franciscan documents make it appear

that John acted precipitously and maliciously, but this is untrue.¹ John inherited an almost impossible situation, and some pope would ultimately have to solve the 'Franciscan Question'. Franciscan zealots would call him 'that heretic, Jacques of Cahors', and 'the king of the locusts who destroyed the poverty of Christ'.² However, an examination of the previous century will show that the pope described in the history books only marginally resembles the real man. The propaganda worked over the course of seven hundred years!

The Franciscan situation required strong, decisive action, for the debate over perfect poverty had already lasted for almost a century. The friars wanted two competing ideals; they desired autonomy in governing themselves, but also demanded continued underwriting by the papacy. John's solutions should have solved the problem, but something happened in 1324 that proved an insurmountable stumbling block to the Pope and provided an incredible boost to the friars' position. That 'something' was Marsilius of Padua's *Defensor pacis*. Marsilius's words changed the course of the debate by giving the friars the necessary tools to rephrase the argument as if it were brand-new. Although the friars lost their battle with the Church, they were victorious over Pope John personally. Between 1324 and 1327 Franciscan writings and behaviour underwent a marked change. The *Defensor* provides at least one explanation for this transformation.

Although Marsilius's work has been studied in many different contexts, a better understanding of the Paduan's purpose lies in recognizing that Marsilius used the same topics, theories, and references from the past century of Franciscan conflict and controversy, and also in the friars' current battle with Pope John XXII. Whether or not Marsilius believed in the Franciscan theories or even possessed a like goal, he astutely realized that their cause could be used for his ends. Marsilius's use of the current situation between the Pope and the friars was brilliant. He universalized matters under dispute by replacing references to the order with references to the Church in a way no Franciscan or member of the Curia had previously been able. He effectively shone a light on what the Franciscan argument had become, and his words became the counterpoint to

¹ For instance, the chronicle of Nicholas the Minorite reports John's issuing of *Cum inter* as sudden, and as the beginning of the controversy between a persecuted and misunderstood minority against an all-powerful pope (*Miscellanea*, III, 206a–358b).

² Anonymous, 'Fratricelli cuiusdam 'Decalogus evangelicae paupertatis' anno 1340–1342 conscriptus', *Archivum Franciscanum Historicum: periodica publicatio trimestris cura*, 32 (1939), 279.

Pope John’s arguments. If Marsilius had kept exclusively to the terms of the arguments used by the writers from the preceding century, an emphasis on the problems of poverty and material ownership would have continued to overshadow temporal power and *plenitudo potestatis*. Not only that, his work would have disappeared into ignominy with the other great writings on the subject of that time as just one more diatribe. To understand his significance and impact on the Franciscans it is important to establish the context of the Franciscan Question. Marsilius utilized the references and conclusions from six Franciscan conflicts:

1. The splitting into factions of the Franciscan order.
2. The controversy between the mendicant orders and the secular clergy.
3. The conflict between the mendicant orders and the secular masters at the universities.
4. The ‘Correctorium Controversy’ between the Franciscan and Dominican orders.
5. The Spirituals faction versus the Conventuals of the Franciscan order.
6. The Franciscans united against Pope John XXII.

Linking Marsilius’s polemical work with the Franciscan cause against the Pope in the battle for jurisdiction and supremacy incorporated the two agendas into a single concerted effort.

After the death of St Francis, two increasingly divergent factions sought to define Francis’s dream. The Spirituals believed in a strict interpretation of the Franciscan Rule, while the Conventuals believed that the order must accommodate change. Both groups claimed to possess the correct version of what their founder intended.

In an attempt to define the Franciscan life (which the friars already equated with the *vita apostolica*), the order asked Pope Gregory IX for help, and commissioned four masters to outline general principles. The Four Masters thought Gregory’s interpretation of poverty was too strict in his first bull, *Quo elongati* (28 September 1230), and too lax in his next bull, *Prohibente regula* (12 December 1240).³ They recommended disregarding privileges against the rule. This is the first hint that the Franciscans saw themselves as a separate entity within the Church, and even claimed the authority or power to decide what was true doctrine and what was not. Pope Innocent IV followed with further

³ *Expositio quatuor magistrorum super regulam fratrum minorum* (1241–42), ed. by P. Livarius Oligier (Rome: Edizioni di Storia E Letteratura, 1950).

clarification on *usus vs. dominium* in *Ordinem vestrum* (14 November 1245) and *Quanto studiosus* (1247). In 1249 the Franciscan Chapter of Metz decreed that Innocent's ordinances should be temporarily suspended.⁴ By 1254 the rejection was official. The Franciscans had successfully declared autonomy from the papacy in interpreting the gospel, and no one seemed to notice.

Friction developed between the mendicant orders and the secular clergy as the friars rapidly expanded in size and power. Between 1229 and 1231 Pope Gregory IX issued a series of bulls in favour of Franciscan claims against the secular clergy, and Pope Alexander IV consistently condemned the masters while supporting the friars. Resultant writings revolved around the consequences of papal favouritism leading to a lessening of episcopal jurisdiction while simultaneously enlarging papal power and jurisdiction.

The increasing numbers and subsequent influence of the friars at the universities also led to outright confrontation between them and the secular masters. Arguments over papal jurisdiction led to Pope Alexander IV condemning the masters in 1256. In 1268, secular master Gerard of Abbeville targeted Franciscan doctrine, claiming that the Franciscan theory of poverty served as an assault against the Church's wealth and resources. Pointing out the abundance of Franciscan wealth, he called its *dominium* by the pope a 'vacuous legal fiction' because of the impossibility of distinguishing use from ownership (especially with consumables). He echoed previous writings by stating that the pope maintained the Church as a whole, but bishops did not derive their own individual authority from the pope.⁵

Franciscan minister general Bonaventure replied in late 1269 with *Apologia pauperum*, developing his doctrine of Christ's condescension to the imperfect and outlining perfect poverty. Two objections had been made to the Franciscan claims: first, that use and dominion could not be separated with consumables, and second, that because popes gained no temporal benefit from Franciscan goods, they had no true dominion over them. To respond to the first objection, Bonaventure explained the differences between *usus* and *possessio*. Since *dominium* and *usus* were separable in civil law, he wrote that they could also be divided in spiritual matters. To the second objection, the Seraphic Doctor argued that the pope gained a spiritual

⁴ *Analecta Franciscana: sive chronica aliaque varia Documenta ad historiam Fratrum Minorum spectantia*, ed. by the Fathers of the College of St Bonaventure, 10 vols (Quaracchi, 1885–1951), I, 235.

⁵ Gerard of Abbeville, *Contra adversarium perfectionis Christianae*, ed. by P. Sophronius Clasen, Extractum ex Periodico A, in *Archivum Franciscanum Historicum*, 32 (1939), 133.

benefit by caring for the friars’ spiritual welfare, and that a benefit cannot be conferred upon a person who is unwilling to accept it. He also showed that Christ was royalty but chose to live as a beggar as opposed to the Dominican opinion that Christ’s royalty was not temporal, so his poverty was involuntary. Distinguishing between personal and communal ownership, Bonaventure argued that a rejection of both identified the Franciscan lifestyle and the life of Christ. *Apologia pauperum* took the debate to a new semantic level by introducing the concepts of *proprietas*, *possessio*, *usufruct*, and *simplex usus* as variations of dominion and use.

With the Holy See consistently siding with the Franciscans in their claim to superiority based on living the *vita apostolica*, the Dominicans became contentious. The issues grew into a full-scale pamphlet war between the two mendicant orders, aptly labelled the ‘Correctorium Controversy’.⁶ To justify wealth existing alongside perfect poverty, Franciscan John Pecham claimed that all jurisdiction and ownership was Christ’s. The Dominicans accused the friars of actually owning property against Francis’s will. The Lesser Brothers answered with the argument of papal *plenitudo potestatis*, saying that a pope had authority to govern the whole Church. The Order of Preachers stated that *usus* and *dominium* could not be separated, whereupon the Franciscans insisted that the absolute power of the papacy defined a separation of use from ownership.⁷

Causing further alienation, Franciscan scholars could not agree with many of Thomas Aquinas’s theories. The Dominicans adopted Aquinas’s positions, but the Franciscans issued a *Correctorium fratris Thomae* listing Aquinas’s errors.⁸ The author, William de la Mare, specifically attacked two passages from Aquinas regarding religious vows. Aquinas wrote about the problem of committing mortal sin once a religious transgresses anything contained in a vow. He explained that when the vow was made in obedience according to the rule,

⁶ See David Burr, *Olivi and Franciscan Poverty: The Origins of the Usus Pauper Controversy* (Philadelphia: University of Pennsylvania Press, 1989).

⁷ The papal bulls favouring (and defining) the life of poverty revolved around the correct interpretation of *dominium* and *usus*. Both terms carried legal implications. Franciscans and Dominicans both ‘owned’ property and ‘enjoyed wealth’, they just explained it differently. Dominican writers stated that one need not pay attention to actual wealth, but rather to the mind of the user. For more discussion on this subject, see Janet Coleman, ‘The Intellectual Milieu of John of Paris OP’, in *Das Publikum Politischer Theorie im 14. Jahrhundert*, ed. by Jürgen Miethke (München: R. Oldenbourg Verlag, 1992).

⁸ William de la Mare, ‘Correctorium’, *Archivum Franciscanum Historicum*, 26 (1933).

only what was against the precept of the rule constituted a mortal sin. In this way, only transgressions and/or omissions became venial sins. To avoid this, Aquinas wrote, religious did not vow to observe everything in a rule, but rather, they vowed the regular life. Some orders (for example, the Dominicans) were more prudent than others, for their vow was to live according to the rule, so the rule became a pattern for their lives, and not an absolute law.⁹ William also attacked a similar passage from Aquinas's *Quodlibeta*, which asked whether someone who took Franciscan vows sinned mortally if transgressing any part of the rule. Aquinas concluded that the obligation to the vow required obedience to everything in the rule, or the one making the vow would be in *laqueum peccati mortalis*. The Dominicans saved themselves from the snares of damnation by promising not to observe the rule, but to swear 'obedience according to the Rule'. William de la Mare wrote that religious follow a rule according to the way the original author intended. The Franciscan Rule specifically distinguished between precept and counsel. He protested that Franciscans vowed not to obey the rule, but rather, to live the gospel, following those things that were outlined in the rule *praeceptorie vel inhibitorie*.¹⁰

In 1279, Pope Nicholas III attempted to settle all these conflicts by issuing *Exiit qui seminat*. *Exiit* stipulated that Christ and the apostles lived without individual or communal possessions, and that they had shown the path to perfection in doing so. They retained *simplex usus facti* and rejected *proprietas*, *possessio*, *usufructus*, and *ius usus*. *Exiit* clearly gave official sanction to the Franciscan doctrine of absolute poverty, borrowing directly from *Apologia pauperum* both in language and theory. *Exiit* was promulgated partly to settle questions about the rule, and also to curb certain people who were 'springing and snapping' at it, referring to those who 'snap at the brothers and tear at their Rule with doggy barks'.¹¹ Nicholas acknowledged the problem by stating that the Franciscan vow 'might seem to ensnare the soul of the vower' since this kind of promise taken in the absolute sense could never be kept, but any vow must look to the words of the original author. In this construct some of the words in the rule become precepts because they were emended *praeceptorie vel inhibitorie*.

⁹ *Summa theologiae*, 2a 2ae, q. 186, 1.9.

¹⁰ William de la Mare, p. 406.

¹¹ *Chronica XXIV Generalium Ordinis Minorum*, in *Analecta Franciscana*, III, 369; *Corpus iuris canonici* (1881), ed. by Aemilius L. Richer and Emil A. Friedberg, 2 vols (Graz: Akademische Druck-u. Verlagsanstalt, 1959), p. 110.

Nicholas meant *Exiit* as a final settlement of the issue of poverty, and forbade any glosses under pain of excommunication.

Both the seculars and the Dominicans claimed the Franciscans were not only issuing a challenge to the Church’s right to possess property, but also questioning the authenticity of the traditional teachings on Christian perfection. This battle highlighted more clearly the differences within the Franciscan order. The leaders of the order argued against their opponents using values held by the Spirituall faction. Nevertheless, when the Spirituall tried to live according to those same values, they became marginalized within the order and were severely persecuted. Depending on the interlocutors involved, three separate aspects of poverty were at issue. The two mendicant orders vied for supremacy as they contended over the virtue inherent in poverty. The friars and the seculars battled over the lawfulness of mendicancy (and its definition). The Conventuals and Spirituall factions of the Franciscan order, who agreed on the fundamental theory of evangelical poverty, still could not reconcile their differences regarding its application.

About this time contemporary opinion began arriving at an inescapable conclusion: there were certain actions that were not permissible, not even for Christ’s Vicar on Earth. The Spirituall would incorporate this powerful idea into their protests. The Spirituall’s movement was spreading and causing a serious breach in the relationship between the order and the Holy See. Peter John Olivi wrote a treatise on poverty outlining the doctrine of *usus pauper*.¹² Using the Bonaventuran thesis as a starting point, he wrote that a violation of a vow in an otherwise good life was not a mortal sin, and if temporary was not venial. Many in the order accepted these premises. Olivi believed that obedience to the rule was greater than obedience to the pope. The rule, therefore, was above everything else and inviolate because it was equivalent to the gospel.

The leader of the Spirituall from Umbria, Ubertino da Casale, drew heavily upon Bonaventure, and then on Olivi. Using similar imagery from the previous writers, he linked the mystical antichrist in Revelations to papal legitimacy. Ubertino became well known for his critical views on pontifical rule, denying the legitimacy of Pope Celestine V’s abdication. He named Pope Boniface VIII specifically as the antichrist and Pope Benedict XI as one of the beasts of the

¹² Petrus Ioannis Olivi OFM, ‘Quaestiones Quatuor de Domina’, ed. by P. Dionysius Pacetti OFM, in *Bibliotheca Franciscana Ascetica Medii Aevi* (Quaracchi: Collegii S. Bonaventurae, 1954), vol. 8.

Apocalypse.¹³ Drawing on the writings of Joachim of Fiore, and identifying Olivi's *usus pauper* with the teaching of the gospel itself, Ubertino suggested that those who opposed it might be considered heretics. He spoke against glosses of the rule, targeting papal bulls whose explanations of the rule altered the original intent of the document.¹⁴ His words against the papacy naturally caught the attention of the Curia and his enemies in the order.

Brian Tierney writes:

Papal infallibility does not belong to the ancient and constant faith of the church [...] but is the sudden creation of a novel doctrine at the end of the thirteenth century useful to a particular group of controversial circumstances involving Joachimite radicalism, Franciscan spirituality and the whole, peculiar, ambivalent relationship between the Franciscan order and the papacy.¹⁵

Pope Clement V called the rebellious Spirituals to appear before him in 1309 at Avignon for the beginning of what became the Council of Vienne. Now, the best interlocutors were assembled and ready with quills drawn. Altogether some forty treatises were written, of which about half are extant. The man whose ideal both sides claimed to be defending, St Francis of Assisi, would have chosen neither side were he still alive and present, yet that mattered to neither faction. The main antagonists were Ubertino on the Spirituals' side against Raymond de Fronsac and Bonagratia de Bergamo on the Conventuals'.¹⁶ Ubertino identified Franciscan poverty with the poverty of Christ, following the premises of Bonaventure and *Exiit*. He stated that evangelical poverty in its highest form required the renunciation of all dominion, both individual and common, and

¹³ 'Arbor vitae crucifixae Jesu Christi' (Venice: Andreas de Bonetis, 1485), v. 8, in *Liber da Flore*; see H. Grundmann, 'Das Liber de Flore', *Historisches Jahrbuch*, 49 (1929), 90.

¹⁴ The primary point of contention surrounding Francis's original intent revolved around Francis's last words in his *Testament* and its solemn prohibition on glossing the rule. In stating categorically that the *Testament* was not binding, Pope Gregory IX made possible the very papal intervention against which the *Testament* had warned. In glossing the rule Gregory exchanged papal authority with the authority of Francis. Since papal involvement pivoted around poverty, the question became inseparable from the question of poverty.

¹⁵ Brian Tierney, *Origins of Papal Infallibility 1150–1350: A Study of the Concepts of Infallibility, Sovereignty, and Tradition in the Middle Ages* (Leiden: E. J. Brill, 1972), p. 57.

¹⁶ Raymond Geoffroi served as Ubertino's backup until his death in 1310. Geoffroi's sudden death (along with two other men) aroused suspicions and brought claims of poison: see *Archiv für Literatur und Kirchengeschichte des Mittelalters*, ed. by P. Heinrich Denifle and Franz Ehrle, 7 vols (Berlin: Weidmannsche Buchhandlung, 1885–1900), II, 133.

stipulated that friars had no recourse in the law, because they had and could have no legal rights.¹⁷

After the first round, the members of the commission could not agree on a definition of poverty, so the debate became mired in semantics and technicalities. It took four years for Clement to finally settle the affair by issuing two bulls: *Exivi de paradiso* and *Fidei catholicae fundamento*,¹⁸ which together offered a clear standard for moderate observance of the rule. Clement’s decrees were meant to close any loopholes left by *Exiit*. The conclusion of the Council of Vienne supposedly marked the end of the debates between the Spirituals and the Conventuals as two separate but equal parties. The Pope ordered them to forget their differences and act like one united order. However, the Spirituals continued to follow their strict observance of the rule, and the Conventuals increased their persecution.

When Clement died in 1314 he left a huge gap, and no one imagined at that time that the aged Cardinal Jacques Duese would be elected to the papacy. Even so, after much deliberation, he ascended to the papal throne as Pope John XXII on 5 September 1316.¹⁹ Although John remained in Avignon and greatly enlarged the papal holdings there, he understood that for any long-term hope for a claim to authority, the Holy See must be re-established in Rome. However, for this to occur, order must be restored in Italy. The Italian communes were in a state of flux and constant strife. Additionally, the treasury was broke. Amidst all this, both factions of the Franciscan order immediately beset him with their claims. Other problems throughout Christendom held his attention, but many of these issues seemed to relate back to the Franciscan-based problem of evangelical poverty. As he investigated the situation, he found an ally in the new Franciscan minister general, Michael of Cesena. Like John, Michael came to his role after a long vacancy, and inherited a situation rife with problems. The first item of business had to be re-establishing control. The Franciscan order could no longer contain the contention, so the Pope and General formed an alliance.

¹⁷ *Archiv für Literatur und Kirchengeschichte*, III, 49.

¹⁸ *Corpus iuris canonici*, Clement, I. 1.; *Bullarium Franciscanum*, V, 196.

¹⁹ Previously, in March 1310 Clement had called Jacques Duese to court and appointed him Bishop of Avignon. At the Council of Vienne Jacques sat on the commission. Later that year Clement sent him to Philip the Fair. It is significant to note that Jacques lived in Avignon during that decisive council, and that he had firsthand experience with contemporary *regnum* versus *sacerdotium* issues as they occurred.

Pope John believed that the 'Franciscan Question' could be reformulated and simplified. After all, the question of poverty was no longer simply a Franciscan or even a mendicant question. It involved all of Christendom. Was Christ poor? If so, then the question must be answered according to the needs of the entire Church. If not, further argument was unnecessary. Either way, a second question remained: what role did the Franciscans play within the Church? John ultimately ended the debate by changing the parameters of the basic question. John did not care about factions; nor did he care specifically about the issue of the poverty of Christ. Two years of investigation yielded a plethora of written opinions from both sides.

John ordered the protesting Franciscans to be subjected to an examination.²⁰ In partnership with Michael, John instructed the Inquisition to examine the protesting friars. In the fall, the Pope issued a bull in lieu of a final settlement. John's famous last words of the bull read: 'Poverty is great, but unity is greater; obedience is the greatest good if it is preserved intact.'²¹ Those who resisted were imprisoned or burned alive. The Franciscan leadership not only did not protest, they actively aided the Pope in his endeavours. Five more years of debate concluded that the *usus pauper* corresponded with Nicholas III's *Exiit*. As long as the Franciscan doctrine of poverty could be invested with a divine origin in Christ it would remain a rallying point to those who opposed (or were opposed by) the authority of the Church. John reputedly had a temper, but he did not act impetuously. He studied all the documents himself, and he asked for reasoned opinions from the Curia and elsewhere in the Church. Clearly, the issue of evangelical poverty needed to be resolved. Pope John's personal study revealed that the anathema in *Exiit qui seminat* would have to be overturned before he could proceed any further. First, he neutralized *Exiit* by suspending the anathema.²² He specifically addressed the Franciscan Rule, and explained what it could and could not mean, and therefore what the Church could and could not allow. John phrased it in a way no one else had. Theory determined practice, and not vice versa. There could not be two methods claiming to follow one common theory.

John knew that Louis of Bavaria intended to intervene in Italy with the support of Matteo Visconti and the other Italian Ghibellines. John had

²⁰ *Quorundam exigit caecitas* (13 April 1317).

²¹ *Quorundam exigit caecae scrupulositatis* (7 October 1317).

²² *Quia nonnumquam* (26 March 1322).

stubbornly rejected all of Louis’s overtures, which inflamed opinion against him. The Bavarian quickly became the centre of any resistance to the Pope’s pretensions of power. Italians from the city-states were making a clear distinction regarding the Pope’s rights and between temporal and spiritual authority. The author of *Annales Mediolanenses* asked:

Is Pope John XXII waging a just war against the city of Milan? It seems not, for he should not intervene in wars, but only in spiritual matters [...]. Moreover no man acts with equity when he seizes another’s property; since the pope has no rights over this city, he is acting unjustly in attacking.²³

In the interval, the friars refused to accept the verdicts handed down by the papacy. Various Franciscan cases came before the Pope. For example, in 1321, a master at the University of Paris, Jean de Pouilly, taught that the jurisdiction of prelates, bishops, and priests came directly from God *de iure divino*, so any privilege contrary to this jurisdiction — even if granted by the Holy See — was null and void. John summoned Jean to Avignon for an open debate between himself and other theologians and canonists, and then condemned Jean’s views on 24 July 1321.²⁴

Meanwhile the Franciscan cardinals requested a united opinion from the leading men of the order in May 1322. Since the complete possessionlessness of Christ formed the basis of Franciscan theory, they naturally gave their response in decisive terms, stating emphatically and uncompromisingly that ‘the utter poverty of the Redeemer of the human race during His earthly life had already been for many years a dogma of the church’.²⁵ They also stated that the doctrine of the poverty of Christ had been approved by John’s own hand in *Quorumdam Exigit*. Next they issued an *Encyclical to the Faithful* (short version) on 4 June 1322 followed by the long version on 11 July 1322. Both letters countered John’s claims and elaborated the Franciscan position. The second of these two letters was approved not only by the Chapter, but also by all forty-one Franciscan bachelors of theology at Paris and Oxford.

²³ Muratori, XVI, col. 697, in G. Mollat, *The Popes at Avignon 1305–1378*, trans. by Janet Love (Edinburgh: Thomas Nelson and Sons, 1963), p. 81.

²⁴ *Vas Electionis*, in *Corpus iuris canonici*, 3, tit. 7, col. 2, in *Clem. Extravagantes communes*, 5, tit. 3, col. 2; *Chartularium Universitatis Parisiensis*, 2, no. 798, ed. by Henricus Denifle and Aemilio Chatelain (Paris, 1890), p. 243.

²⁵ *Bullarium Franciscanum*, V, 234; *Miscellanea Franciscana*, III, 208; *Archivum Franciscanum Historicum*, 23 (1930), 123.

On 8 December 1322 John issued the first version of *Ad conditorem*, which reintroduced the argument of consumables used by Gerard of Abbeville.²⁶ He upheld the thesis from the Commission of Eight Masters which denied any division of *ius naturale* and *ius civile*. *Ad conditorem* declared there was no use without lordship in consumables (or Christ would have been at fault), and no *simplex usus* without the right of use. The rule did not restate the gospel in its entirety, yet Franciscans held it to be a restatement of the gospel based on the poverty of Christ alone. Was this one argument the reason the rebels called the Roman Church ‘the carnal church’, and the Roman pontiff ‘the antichrist’?

Bonagratia de Bergamo responded to *Ad conditorem* by protesting on behalf of the order.²⁷ John XXII had Bonagratia placed in prison for a year. He fortified his arguments in *Ad conditorem* with Aquinas’s presentation on charity, and reissued it with the same date as the first version. He wrote that to have a simple use in an object without a right of using it would make an act unjust. He used Aquinas’s argument that the complete renunciation of possessions did not necessarily involve perfection, since charity, not poverty was the basis of a perfect life. John’s presentation in *Ad conditorem* is very interesting because his words were not at all religious. He began by identifying himself as a ‘maker of canons’, describing his job as needing to fix anything done by himself or his predecessors that would cause harm. His words reveal a wide-ranging familiarity of the many relevant documents on both sides of the argument. For instance, he proposed that he would ‘close the mouths baying’ against the Franciscans. He described Nicholas III’s intentions with *Exiit* as good, but subsequent experience, ‘the teacher of things’, has shown that not only has it not been helpful to the Franciscans but it has been harmful to them and others. Living a life of absolute poverty is indeed a worthy goal, yet no one is poorer. Meanwhile, the Franciscans claim this as a higher life? Interestingly, he used no scriptural references to defend his position. He used earthy examples, even describing use and action with an analogy of borrowing a horse. While valid and logical, his presentation is complicated and often requires multiple readings of a concept to follow the reasoning and even recall how it began. John offers the assurance of his ‘having diligently deliberated beforehand with our brothers [the Cardinals]

²⁶ *Bullarium Franciscanum*, V, 486, 233.

²⁷ *Tractatus de Christi et Apostolorum Paupertate*, and then in a longer, more vitriolic work repeating the same views on 14 January 1323; Alvarus Pelagius, *De Planctu Ecclesiae* Articulus LII, LX, in *Archivum Franciscanum Historicum*, 22 (1929), 292–335 and, 487–511; *Bullarium Franciscanum*, V, 242a–43b.

and with many others’ more than once and humbly asserts he is ‘obliged to foster the truth, as being one who, though unworthy to hold the place on earth of Him who is known to be Truth’. In *Exiit* Nicholas made no such statement of humility, and never once referred to counselling with the cardinals or anyone else, yet John’s words were defamed and Nicholas’s revered.

The Franciscans adapted Bonaventure’s arguments to the new situation, but nothing swayed the Pope. The canonization of Thomas Aquinas in 1323 was another blow to the Friars Minor. On 12 November 1323 Pope John XXII published *Cum inter nonnullos*, thus accomplishing what the Franciscans had feared he would do since he first became pope: he decided the question on the poverty of Christ once and for all — in the negative.²⁸ The Franciscans’ convoluted version of *simplex usus facti* was doomed for hypocrisy and abuse because as administrators the friars never had to worry about poverty or simplicity. Like a wealthy man whose accountants doctor his books so that his money is constantly en route to the bank, but somehow never actually in the man’s hands, the definition begged for balance with the alternate extreme: the *usus pauper*. John stated that there was no way that use could be anything but constant in some sense or another. Therefore the *ius utendi* of civil law must constantly be held, and could not be renounced for a time. Use could be temporarily suspended by choice, but the right of use would always exist *a priori*. Henceforth, maintaining the doctrine of the poverty of Christ would be considered heretical. *Cum inter nonnullos* firmly and irrevocably altered the status of the Friars Minor.

The Franciscans could argue all they wanted (and they would), but they were now owners of property because the Pope renounced all dominion over their goods. Franciscan polemicists countered by insisting all the more on the irreformability of *Exiit*, and claimed that John had now fallen into heresy by overturning an established article of faith. Nevertheless, the Pope renounced his fictive ownership, so it remained with the Franciscans how they would resolve their consequent *dominium*. John had finally accomplished a century-long problem: The Franciscan order was united. Interestingly, in this enterprise the Pope had the full support of the other religious orders as well as the secular clergy. It is significant also that the generals of the Dominican and Augustinian friars, as well as individual Carmelites, wrote pamphlets upholding the Pope’s opinions.²⁹

²⁸ *Bullarium Franciscanum*, v, 518, 256.

²⁹ Noël Valois, ‘Jacques Duesne, Pape sous le nom de Jean XXII’, in *Histoire Litteraire de la France*, 35 (1915), p. 443.

Just two months before *Ad conditorem*, Louis of Bavaria was victorious over Frederick of Austria at a crucial battle fought at Muhldorf. By now Frederick was allied with the Pope, so Louis shrewdly enlisted the disaffected friars to his cause by offering them a refuge or base of operations at his court. Realizing that the Pope was never going to recognize him, the Bavarian crossed the Alps to come to the aid of Visconti against the papal army led by Bertrand du Poujet, who was forced to retreat.

On 22 May 1324, Louis issued a public announcement at Sachsenhausen:

The pope's wickedness touches even Christ, the most Blessed Virgin Mary, the apostles and all whose lives have reflected the doctrine of perfect poverty as set forth in the gospel. Seven popes have approved the poverty as set forth in the gospel. Seven popes have approved the rule which God revealed to St Francis, and on which Christ by his stigmata set, as it were, his seal; but this oppressor of the poor, this enemy of Christ and the apostles, seeks by lying and subterfuge to destroy perfect poverty. [...] What has been determined once through the key of knowledge by the Roman pontiffs in faith and morals is immutable.³⁰

Louis added a vehement protest against the Pope's claim that the empire was vacant, and that the pontiff ruled over it. John was not merely a heretic, but a heresiarch, for he strove by his own errors to pervert the whole of Christendom. John was not intimidated. On 4 July 1324 he declared Louis excommunicate in stronger terms than he had heretofore. In this sentence, he deprived Louis of any claim to the empire, and summoned him to appear before the apostolic tribunal.³¹

One month previous to this, Marsilius of Padua finished the *Defensor pacis*. Marsilius's motive was extreme, and maybe even revolutionary. However, he couched his theories in terminology that felt familiar. He never strayed from easily understood examples, so his writing seemed straightforward and appeared traditional to the fourteenth-century reader.

Whether or not Marsilius believed in the Franciscan cause is irrelevant to this topic. Clearly, he purposely argued his case with the language of the common cause of the Franciscans. He used the same arguments and key phrases that appeared in each of the major conflicts experienced by the Friars Minor in the previous century. If he had used only one it might be coincidence, but he used all six areas of Franciscan conflict. Right from the start of Discourse II, Marsilius listed three enemies: the Roman bishop, the secular clergy, and the

³⁰ *Sachsenhausen Appeal*, in *Miscellanea Franciscana*, III, 224–32.

³¹ *Monumenta Germaniae Historica*, V, no. 944.

Dominicans — the three primary opponents of the Franciscans. He named the pope an enemy due to persecution, the secular clergy through falsehoods that deceive most men, and the Order of Preachers because of ‘the spirit of burning envy’.³² The Dominicans were the obvious targets because he incorporated the Franciscan practice of poking fun at their rivals by referring to the ‘slandorous fangs’ and the loud barks’ of *domini canes*, blatantly calling upon *Exiit*’s reference to ‘doggy barks’.

Marsilius dealt with the seculars’ arguments against the Franciscans with his discussion regarding priests receiving their authority from God, and not from each other in a hierarchical arrangement. He detailed it in such a manner as to gather the arguments that had developed in the previous fifty years of Franciscan debate, revealing a comprehensive knowledge of the relevant documents and writings. He similarly made Bonaventure’s tortuous explanation of charitable condescension more readable by reducing it to a simple but logical argument, severing poverty from charity.³³

Marsilius affirmed that he used words and ideas straight from the glosses available to him at the time. However, many of the references not mentioned by the Paduan but assumed to be from the glosses can be traced directly to the writings from the Correctorium Controversy.³⁴ Marsilius cut to the heart of this controversy by stating that the difficulty over vows was not a question of whether breaking a vow incurs mortal or venial sin; it was about divine law versus natural law. It has been written that Marsilius’s focus on the coercive nature of law ‘is a departure from the medieval tradition’s emphasis on reason as the essence of law’, but all the Franciscan literature during this time pivoted around these ideas.³⁵ The friars continued to develop the Bonaventuran thesis on divine law versus natural law and how it related to vows. Later they would go even further with this idea as they argued over obedience, who had the necessary power to impose force, and which version of *iure* applied. Marsilius echoed that.

Not only did Marsilius describe the Franciscan version of voluntary poverty, particularly in the second discourse, but he clearly outlined the *usus pauper*, which he condensed into a concise presentation. Marsilius’s outline of perfect

³² Marsilius of Padua, *Defensor pacis*, trans. by Alan Gewirth (New York: Columbia University Press, 1951), II. 1. 24. Hereafter, citations of this text appear as *DPa* along with discourse, chapter, section, and/or page number.

³³ *DPa*, I. 13. 37. See also: *DPa*, II. 4. 8; II. 6; II. 8; and II. 12.

³⁴ For example, *DPa*, II. 4. II. 5, and II. 13.

³⁵ *DPa*, p. 36, n. 15–16.

poverty followed Olivi's *usus pauper* as if Olivi were whispering in his ear. This was not the outlandish version perpetuated by the Beguines who had been worshipping at Olivi's tomb, but the theory outlined by Olivi himself.³⁶ When he described the life of ecclesiastical leaders he used the Spirituals' arguments by paraphrasing their writings. For instance, he used Ubertino da Casale's presentation of the wayfarer and also the Umbrian's argument regarding the mendicants' right to sue.³⁷ He similarly imitated Angelo Clareno's eschatological examples and entreaties sharing scriptural references.³⁸ Using the same scriptural references as Bonaventure and Olivi, Marsilius stressed the primary Franciscan teaching that 'Christ's true companions [were] poverty and humility'.³⁹ The other orders had long since declared charity as the primary attribute of Christ, but the Franciscans alone remained adamant, and Marsilius treated the subject as only they did. Also, Marsilius's careful explanations of individual versus communal wealth fit into the Franciscan version as if it were the only explanation.

Various Franciscan authors and Franciscan-supporting popes had used the phrase 'by counsel or command' (and other permutations of it) repeatedly over the previous century. When Marsilius drew on this same phrase along with its attendant discussion, it was not an exposition on passive and active modes of law, but rather the utilization of an ongoing argument over which portions of the rule commanded a religious, and which were merely admonitions.⁴⁰ Again, this was a uniquely Franciscan argument.

Marsilius identified with the Spiritual Franciscans in believing that Christ provided an example for the Church to follow regarding perfect poverty. Therefore, he sought to maintain a distinction between ownership and use. He avoided the known problems inherent in arguing over *usus*, because that always implied no *dominium*. To make his point clearly, Marsilius utilized the Roman property law involving not just *dominium* and *possessio* from the canonists of the previous century, but also *donatio*, borrowed from previous discussions.⁴¹ He borrowed heavily from Angelo's writings on the antichrist when he was at his

³⁶ *DPa*, II. 13.

³⁷ *DPa*, II. 12.

³⁸ *DPa*, II. 5. 7.

³⁹ *DPa*, II. 26. 2.

⁴⁰ *DPa*, p. 188, n. 4–5.

⁴¹ *DPa*, II. 14. 22.

most polemical. Not only did he call Pope John ‘the snake in Aesop’s fable’, an ‘unfeeling ingrate’, a ‘hypocrite’, ‘[b]earing everywhere the fruits of malice, sedition, and discord’,⁴² but used outright scare tactics (with Angelo’s words) in warning other secular rulers against the Pope.⁴³

He referred often to ‘the Philosopher’ even as he selectively quoted and used Aristotle’s words to suit his own purposes. He cited general statements from Aquinas, but then used Bonaventuran explanations. Like any skilled polemicist, he twisted the truth with brilliant precision. He took the wildest accusations from the marginalized Spirituals, and turned them into assumptions that began his arguments. This was an impressive tactic: written sleight-of-hand. For example, he calls the Curia a ‘horrible house of hagglers and den of thieves’, and refers to justice by utilizing carefully selected portions of two different scriptures from the eschatological presentation in Daniel in the Old Testament borrowed directly from Angelo Clareno.⁴⁴ It does not matter that Pope John XXII was an acknowledged expert in canon law and that his personal life could be emulated safely by any friar, for Marsilius cleverly ends the section by referring to the manoeuvring of the Pope against Louis, making it easy to castigate the Pope for every evil charge ever laid at the feet of the papacy. Marsilius directs his attention to the Pope’s current situation with the friars. Referring to *Cum inter nonnullos*, he writes:

Then, having destroyed the relative order of all of [the religious groups called mendicant orders], the Roman pontiff places them under his own immediate care and corrective power, not for the sake of any evident utility to be gained thereby but rather because of his notorious avidity for heaping quarrel on quarrel in order to advance his own interest, aiming thereby to concentrate wealth into his own hands, to despoil the other prelates and to subjugate them still further.⁴⁵

Studying Pope John XXII’s actions during the long years of the Franciscan controversy reveals that he did not heap ‘quarrel upon quarrel’, but rather ended almost one hundred years of bitter, often mortal quarrels amongst the mendicant brothers. As for acquiring wealth ‘into his own hands’, the exact opposite was the case. The friars were angry because he did not exercise dominion over their wealth, but instead gave it all back to them. Additionally, John maintained a

⁴² *DPa*, II. 26. 13–14.

⁴³ *DPa*, II. 26. 14.

⁴⁴ *DPa*, II. 24. 16.

⁴⁵ *DPa*, II. 1, II. 24.

frugal lifestyle. Indeed, his personal standard of living resembled that outlined by Marsilius for priests. Similarly, John did not target only the friars. He systematically went through every department of the Church, holding each accountable by requiring that it follow its own rules. His legal mind was tuned toward deciphering legal documents, like the religious rules, and then requiring that adherents abide by the vows they had made. Indeed, John owned his own copy of the Franciscan Rule, and a copy with annotations made in the margins in his hand written on more than one occasion indicates that the bulls on poverty came directly from him after much study and thought. He carefully explained that the Franciscan version of pseudo-poverty did not release the friars from the solicitude that their vows demanded.⁴⁶ Marsilius was able to use the same words against the Pope, and Marsilius's version of events, couched in familiar language and utilizing Scripture, appeared to be more true. This was polemics at its best, because it was so easy to believe.

Pope John's motive was traditional in nature. He sought to maintain the *status quo*, but he used unique and complicated arguments to justify his assertions. He could not (or did not) try to hide his intellect, and he used abstract theories of law, all of which served to justify each other in seemingly circuitous and self-serving ways. His examples were ambiguous and even sounded petty due to his querulous nature. He consistently ignored the inevitable and likely results of human nature. He wrote of deep theological matters, but couched his thoughts in logical, legal terminology, so his traditional solutions seemed radical, and his arguments were rejected. Marsilius co-opted traditional language, whereas John, with a traditional theory, was rejected due to his extreme language, and a seeming lack of humanity.

Although Marsilius's polemics remain as if he were relating actual history, Pope John's words disappeared into dusty manuscripts that even now wait to be investigated more fully. It can be difficult to proceed with a coherent construction of this subject because most studies list only the papal bulls and the actions of John, while the Franciscans are presented almost as bystanders — and definitely as victims. Explanations and description of the papal bulls actually quote his opponents from the fourteenth century! The treatises of the Franciscans under attack were equally germane and should be addressed. Beyond the written works of the Franciscans, the replies to the formal question put

⁴⁶ *Ad conditorem canonum* (1322) [3].

forward by John from theologians, cardinals, and other churchmen are also extremely relevant.⁴⁷

Strangely, Marsilius and John aided each other’s agendas. Marsilius helped the Pope’s cause, for in his explanation of Bonaventure’s dependence on charitable condescension, he defended the Franciscan position that poverty did not need charity to become more valid or more worthy a virtue. This re-established poverty as a virtue standing alone without the need for charity or any other presumably inferior virtue. At first glance this argument seems unimportant, and perhaps even to act as ammunition against John’s plan, but Marsilius severed the relationship between poverty and charity. When John eliminated poverty from the debate, he left only charity as the transcendent attribute that described the life of Christ. When Marsilius wrote that Christ and the apostles lived in poverty, simplicity, and equality, he was rehashing old arguments that were easily swept aside by John’s words, because John effectively eliminated poverty from the debate.

John also helped to further Marsilius’s cause. Marsilius’s genius came in his explanation as to why the Pope was at fault. Christ had come into this world to wield spiritual not temporal power, and while he lived in it he had never refused to render unto Caesar.⁴⁸ This was one argument neither the Church nor the Pope could counter. John made Marsilius’s work easier by claiming that he held the power to wield positive law.

Additionally, John committed a grave error in listing wrongdoings dispassionately, treating the debate as if it were simple. That would mean that those involved had been arguing, grasping, and killing each other unnecessarily for almost a century. John’s bulls reveal his indifference to the question of poverty, which was the life blood of his opponents. Naturally this enraged them further. This premise was logical, but with a better understanding of human nature, he would have realized that the logic or validity of an argument is not what drives it; rather, emotion rules. For his part, Marsilius used the circumstances between the

⁴⁷ Malcolm Lambert states: ‘The central documents of the controversy, the Bulls of John XXII and the works of the Franciscans who opposed him, still require closer analysis. Existing accounts of them are defective, partly because they have not given full weight to all the evidence. If this is done, then a different picture will emerge from that which is generally accepted’ (Malcolm D. Lambert, *Franciscan Poverty: The Doctrine of the Absolute Poverty of Christ and the Apostles in the Franciscan Order 1210–1323* (London: SPCK, 1961), p. 226).

⁴⁸ *DPa*, 1. 4. 4–5; 5. 25.

Franciscans and the papacy as a club to bludgeon the abuse of power on the part of the Pope.

The Franciscans made no immediate response against *Cum inter*. Instead, they transferred their focus to the situation between John and Louis of Bavaria. After this time, Franciscan literature changed, and so did their activities. When Louis stated in the *Sachsenhausen Appeal* that the Pope could not reverse Nicholas's decretal, John reasserted sovereignty. He affirmed that since Scripture can contradict the poverty of Christ, the doctrine could not be an article of faith; therefore it would be acceptable to change the teaching of Nicholas.⁴⁹ This new dogma was significant because it represented a shift in John's thinking about the idea of irreformability. Previously, John saw it as a choice between sovereignty and infallibility. If the Franciscans were right in claiming that *Exiit* was irrevocable, then he was no longer sovereign, and consequently could not revoke the decrees of his predecessors.

Once John denied the binding authority of Nicholas III's *Exiit*, he severed a segment of the past, but this could be a risky manoeuvre. He justified his action by appealing to the abstract rights of a legislator who might change anything from the past that he considered a danger in the present. The risk rested in the fact that it isolated the Pope from the papal past, which traditionally enhanced any present papal utterance. Also, it weakened the connection between past and present that ultimately went back to the relationship between Christ and St Peter. John needed to get past Nicholas's judgement without negating the authority of the past, so he claimed that no past pope's utterance carried any authority unless clearly sanctioned by the New Testament and the practice of the *ecclesia primitiva*. His conclusion posited that the modern Church sprang directly from the beginnings of the Church with Christ and the apostles. Another consequence of John's actions was a lessening of *dominium* for the Church. The Church had *proprietas* on which it relied to sustain its claims to potestas. In giving up ownership of Franciscan property, John simultaneously gave up a measure of potestas, which would also open the way for secular power to gain an upper hand. With this process, John created an opening through which those who sought increased papal power could form a doctrine of papal infallibility. Brian Tierney writes, 'Through some uncharacteristic streak of caution or through sheer good luck (or bad luck) the actual terms [John] used

⁴⁹ *Quia quorundam mentes* (10 November 1324), in James Heft, *John XXII and Papal Teaching Authority*, Texts and Studies in Religion, 27 (Lewiston/Queenston: The Edwin Mellon Press, 1986), pp. 773–75.

in condemning the Franciscan position left a way open for later theologians to reformulate the doctrine of infallibility in different language.⁵⁰

At the Chapters General at Lyons in 1325, Minister General Michael of Cesena had issued strict instructions to the provincials threatening with imprisonment any friar who should dare to speak disrespectfully either of the person of the Pope or of his enactments.⁵¹ That was Michael’s official position. His movements after the Chapter at Lyons are hazy, however. In 1326 Michael was in Paris, and then in Italy in 1327. While in Italy, he received an urgent letter from the Pope summoning him to Avignon.⁵² He used sickness as an excuse for not obeying the command, and Robert of Naples’s physician, who testified to his unfitness for the journey, visited him at Tivoli. Whatever he suspected, John was obliged to accept the excuse. Two months later John received letters from the captains of the Guelf party at Perugia, apologizing humbly for having made use of friars as couriers, since the Minister General was known to be intriguing with Louis of Bavaria, now in Italy, and that Michael had expectations of becoming antipope.⁵³

Michael arrived at the papal court in December 1327. For four months everything appeared amicable between Pope and General. Michael possibly did not know that John knew of his secret negotiations with Louis. Meanwhile, the Pope was doing everything in his power to undermine the General’s influence in the order, and to keep him from openly joining the Bavarian and becoming antipope. John refused to allow Michael to attend the Chapter, and sent his own legate in his place. The friars re-elected Michael anyway.

Whether or not Michael intended to usurp John’s role is unknown, for John successfully kept him imprisoned at Avignon. Louis of Bavaria entered Rome amid acclamations with Marsilius in tow as his primary advisor. He was crowned emperor on 17 January 1328, whereupon he deposed ‘Jacques of Cahors’, and chose a little-known Franciscan, Pietro Rainalducci, as Pope Nicholas V.

In 1328, once again John called for a general public debate on the subject of the poverty of Christ, after which he declared that the Franciscan version was false and heretical. He appointed an additional task force to this end. The task force found that the Spirituals’s essential error was the same as the Franciscan

⁵⁰ Tierney, p. 171.

⁵¹ *Analecta Franciscana*, II, 135.

⁵² *Bullarium Franciscanum*, V, 667, 325 (8 June 1327).

⁵³ *Archivum Franciscanum Historicum*, 2 (1909), 161; *Acta Aragonensia* II, 675–76.

poverty doctrine. With the release of this report, Pope John began pressuring Michael to change the entire order's teachings on Christ's poverty. Michael rejected John's pleas. The Franciscans had been overturning papal utterances at their chapter meetings for seventy years, and now a pope was refusing their decision on Church doctrine!

On 9 April 1328 John declared openly in consistory (and according to Michael's account with considerable violence) that the decision of the Chapters General at Perugia concerning the poverty of Christ was false and heretical. According to his own account, Michael resisted the Pope, at which point John lost his temper and denounced him openly as 'a heretic, an adherent of heretics, and a serpent nourished in the bosom of the Church'.⁵⁴ John ordered Michael under pain of deprivation and excommunication to remain at court as his prisoner. When Michael returned to the Franciscan convent, he wrote down his own version of the confrontation and listed the names of eyewitnesses. Six weeks later, on the night of 26 May 1328, Michael and an unknown number of companions fled from Avignon to seek refuge at Louis's court.⁵⁵

John had a clear, political plan to restore the Church's independence by building up a balance of power in Italy, and also throughout Europe. Louis of Bavaria lost in his bid for power. The Franciscans should also have lost some measure of power, but they did not act defeated. Even as Marsilius had utilized Franciscan arguments to further Louis's cause, these friars (now referred to as Michaelists) began a political campaign using tactics learned from the Paduan. He had given them enough ammunition to work against the Pope for years. They continued to write against John as if the previous bulls did not exist, continually referring to *Exiit*. Michael wrote a second letter in September 1328, and this time addressed it to 'the Christian Faithful'. Similar to his previous missive, this letter purported to offer a history of John's dealings with the Franciscans, claiming the Pope acted 'precipitously and inexplicably', listing 'the hostile decrees of 1322', thus ignoring completely John's attempts to negotiate privately with Michael for six years. Michael's letter was incorporated into the chronicle of Nicholas the Minorite with its history paraphrased in the introduction.⁵⁶ The chronicle's introduction, then, became the main account of the struggle between John and the Franciscans. The Franciscan version of the

⁵⁴ *Miscellanea Franciscana*, III, 237–39; *Bullarium Franciscanum*, V, 498.

⁵⁵ *Bullarium Franciscanum*, V, 711, 345.

⁵⁶ *Miscellanea Franciscana*, III, 206a–358b.

story has survived intact through the centuries, so we believe things that cannot simultaneously be true. The Michaelists successfully presented a pope who set out to purposely destroy them for inexplicable reasons with no warning, starting with the surprise action in 1322, and yet it was Michael himself who initiated the proceedings against the order nine years previous to that time. Pope John appears sneaky and underhanded, but it was Michael who secretly combined with the Pope’s enemies.

Studies of papal infallibility separate and apart from the Franciscan controversy reveal John’s pronouncements as consistent within the tradition. However, any immersion into the extant documents of this specific time makes John’s words and actions seem unique. One of the reasons for this is that Pope John himself spent so much time and attention on the subject, constantly re-explaining his position. Perhaps he would have been better served by simply declaring the obvious and refusing to address the topic again.

John assembled a packed Chapter at Paris in 1329, and had Michael deposed from his office with Guiral Ot elected in his stead.⁵⁷ In *Quia vir reprobus* (16 November 1329), he offered a lengthy refutation of the Franciscans’ views summarizing Aegidius Romanus’s earlier position. The resultant dispute included William of Ockham led (by his own admission) into his radical criticism of the medieval Church from a conviction that in the poverty of Christ issue, the Pope imposed heresy on the Church.⁵⁸ In 1331, Minister General Ot moved to have the Pope abrogate the rule’s prohibition on receiving money, and furthermore, to abolish *Exiit* and *Exivi* completely since they only caused confusion.⁵⁹ John rejected the proposal.⁶⁰ If John had truly wished to destroy the order, he would have welcomed this opportunity. Similarly, if he had only been playing a game for power with the friars, he would have been more careful with his public statements. On 15 December 1331 at the Church of Notre Dame des Doms, contrary to accepted opinion, John preached the alarming doctrine of the ‘Beatific Vision’.⁶¹ Michael of Cesena, William of Ockham, and Bonagratia de Bergamo immediately reissued their claim that the Pope was a heretic. Cardinal

⁵⁷ *Miscellanea Franciscana*, III, 314; *Bullarium Franciscanum*, V, 388.

⁵⁸ *Regesta Vaticana*, 131, fol. 59^v, ep. 212.

⁵⁹ *Analecta Franciscana*, VII, 40–41.

⁶⁰ *Bullarium Franciscanum*, VI, 600; *Archivum Franciscanum Historicum*, 9 (1916), 154–55, 180.

⁶¹ *Chartularium Universitatis Parisiensis*, no. 970–87; Valois, pp. 551–627.

Napoleone Orsini, living at Avignon, encouraged the Franciscans to depose the Pope, whom they mockingly referred to by his given name (or worse).

Meanwhile, Orsini worked behind the scenes to hasten the convocation of a council to judge the Pope. John fell seriously ill. Without denying his belief on a personal level, he recanted on 3 December 1334 in the presence of his cardinals and submitted himself to the decisions of the Church. John died the next day at age ninety, on 4 December 1334, maligned and misunderstood, yet holding firm to his principles. It is because of Pope John XXII's legacy that the Franciscans were forced to unite and work together.

Even though the Franciscans were the actual losers in this contest with the Pope, it never appeared that way. They won the propaganda war, and thus survived for another century of intrigue and political manoeuvring until they finally decided to make the necessary changes of their own accord. Pope John's reputation however, did not survive their confrontation. Marsilius cursed Pope John XXII, declaring:

In truth, the curse is not upon Matteo but rather upon the bishop himself [...] and his is the life that God and men openly regard as accursed, and even more will he be so regarded in the future, both before and after his death.⁶²

Marsilius's words proved prophetic.

⁶² *DPa*, II. 26. 17.

Methods and Sources

ISSUES IN TRANSLATING THE *DEFENSOR PACIS*

Annabel Brett

The *Defensor pacis* presents the translator with manifold problems. This is of course banally true of any but the simplest piece of writing. Many of the issues facing the translator of the *Defensor pacis* are no different, no more or less intractable, than those facing any other translator: in broad and familiar terms, the need to preserve the sense of the original while rendering it accessible to the imagination of those who read and think in a different language. The problems, both of alienation and domestication and of archaism and modernisation, involved in this process are manifold and complex, especially if there is not only a gap in culture but also (as in the present case) a gap in time to be somehow bridged. As Umberto Eco has suggested recently and persuasively, whether the translation should walk across that bridge to its readers, or whether those readers should be encouraged or even forced to walk across it themselves, is not necessarily a global either/or but rather something that needs negotiating at

A version of this paper was given at the conference on Marsilius organized by Dr Gerson Moreno-Riaño as part of the International Medieval Congress at Leeds in July 2003. I am grateful both to Dr Moreno and to the other participants in the conference for their very helpful comments. The section on *politia* was originally presented, in a different version, at the conference 'Public Law before the State' organized by Dr Magnus Ryan and held at the Warburg Institute, London, in January 2003. Again I am grateful both to Dr Ryan and to the participants in that conference for a very stimulating discussion. It struck me that my difficulties with *politia* could not be a more illuminating example of 'issues in translation'. I would like to emphasise that this paper is written from a personal point of view as one who is in the course of preparing a new English translation of the *Defensor pacis* for the series Cambridge Texts in the History of Political Thought. The discussions — and translations — offered here reflect the current state of my thinking, which I cannot guarantee to remain unchanged. All translations, unless otherwise stated, are mine.

every sentence.¹ The well-meant advice simply to ‘translate it into good modern English’ is decidedly unhelpful if the piece of writing in question could not possibly have been written in good modern English, because it comes from a world which good modern English would be inadequate to describe. To capture the sense of the original a translator needs to draw on all her linguistic resources, her contemporary but also her historical understanding of her own language, to create a ‘world of the text’ that, certainly, does not simply reproduce the original, but which may yet not be at home in modern English-speaking countries either. This is the strange place of the translated text: it is the job of the translator to make readers feel that it is at least a possible place, one with internal coherence and in which they can find their way about.

The demands of translation in an academic context impose a further burden. The translator knows that she is writing for students and fellow scholars who will want or be obliged to subject the text to historical, literary, or philosophical analysis. A free translation, even if it very accurately reproduces the sense, will probably not fulfil these demands: academic readers will want to know, for example, whether they are dealing with the same word in the original in two different contexts, or two different words. Translators whose preference is for a freer approach often resort, therefore, to the liberal use of the original words in square brackets interspersed in the translation, or heavy footnoting. By contrast, some translators prefer deliberately to adopt a literalism that extends to transliteration and even sometimes to leaving words in the original. Either way, the basic task of the translator, which is to try to reproduce, as best she can, the sense of the original — in which such features were not present — is compromised. The demand for the translation to be in a way ‘transparent’, to let the reader see through to the original, conflicts with the inescapably literary and poetic aspect of the craft of translation. In other words, perhaps translation, which has become so necessary to modern academic practice, is in fact something that cannot be comprehended by it. Nonetheless, a translator who has undertaken to provide a translation for other academics must bite the bullet and construct something that can be amenable to the sorts of purposes she knows it will serve.

I will not elaborate further on these two initial and basic points, *propter rei notitiam et abbreviationem sermonis* (as Marsilius would say). Turning now to the

¹ Umberto Eco, *Mouse or Rat? Translation as Negotiation* (London: Weidenfeld and Nicolson, 2003), p. 100.

particular case of the *Defensor pacis* and the specific difficulties it presents for the translator, we should start by noticing that since Alan Gewirth's massive and pioneering achievement in translating the work for the first time into a modern language, translations of texts of medieval political thought have proliferated. The result is a sizeable store of accumulated experience in the difficulties of, and solutions for, rendering medieval scholastic Latin into modern languages: including detailed problems, such as the accurate translation of technical (usually Aristotelian) jargon, but also the bigger issues surrounding contested terms such as the eternally problematic *dominium*. Much of this practical wisdom is directly relevant to the *Defensor pacis*, which means that the translator does not have to solve every problem from scratch and can only admire Alan Gewirth, who in very many respects did. Nonetheless the work represents a huge challenge to a translator: partly because of its length (its prolixity, some might say); and partly because the Latin is often opaque and imprecise. Beyond this, however, there are reasons why translating the *Defensor pacis* is a fraught enterprise. Of these I will focus upon two: one is that the meaning or intention of the text is peculiarly contested; the other is that language itself is an issue in the work.

In the first place, then, if we appreciate (as Eco again points out)² that translation is not from language to language but from text to text, we will also appreciate that not all the knowledge of medieval Latin or historical grasp of English in the world would of itself be enough to produce a translation of the *Defensor pacis*. Every translation involves a certain reading of the text and has to make at least some fundamental decisions on the intention or 'semiotic strategy' of the text: that is, it must have an answer to questions such as, What are its key terms? Which contrasts or assimilations support the burden of the argument? If the sense is ambiguous, where should the translation reflect or even promote that ambiguity, and where is it justified in closing it down? All these ultimately involve basic questions of interpretation — what is the text about, what is its point? — which a translator cannot avoid if she wants to make sense of the text in a different language. However, the difficulties of interpretation that surround the *Defensor pacis* are notorious — perhaps greater than with any other text of medieval political thought. These questions of interpretative framework are particularly acute in Discourse I, where Marsilius talks about the nature and rationale of political communities in general terms, and in a language largely (although, importantly, not exclusively) derived from William of Moerbeke's translation of Aristotle's *Politics*. I shall return to the question of what we might

² Eco, p. 25.

call the 'linguistic register' of the text below. For the moment I am concerned with issues of how to situate the text in relation to contemporary institutions and practices (including linguistic practices) and how these issues bear on the question of translation.

These contemporary institutions and practices could be both academic and political or sociopolitical; Christoph Flüeler, for example, has insisted on the practice of commentary on the *Politics* in the Faculty of Arts at the University of Paris as a key context for understanding the process of argument in Discourse I.³ But in general I think it is fair to say that most controversy has centred round the question of political context. Thus, one school of thought takes it that there is a definite field of reference for the political observations and prescriptions of Discourse I: that when, for example, Marsilius describes the nature of the human legislator and its relation to the *pars principans*, he is really talking about the practices of communal government in northern Italy (and Padua in particular).⁴ The polar opposite of this position is to reject the idea that Discourse I is 'about' anything in this sense of describing or referring to, and to insist on the purely philosophical or indeed utopian character of Discourse I, its deliberate detachment from contemporary political realities.⁵ Most interpretations fall in between these two poles: yes, Discourse I is philosophical or theoretical, but nevertheless Marsilius drew on or was influenced by certain contemporary realities in formulating his theory. The theory does not therefore stand in complete detachment from these realities and the non- or less-theoretical language used to characterize them in other contexts: rather, it is inflected by those realities and that language in a certain way, and as a result performs a certain kind of function or has a certain kind of intentionality in relation to them. A final position is that the distancing from any specific contemporary political entity, the lack of more explicit specification for terms such as *universitas civium*, is not because the text is theoretical or philosophical at all;

³ Christoph Flüeler, *Rezeption und Interpretation der Aristotelischen Politica im späten Mittelalter*, 2 vols (Amsterdam-Philadelphia: B.R. Grüner, 1992), I, 120–31.

⁴ Nicolai Rubinstein, 'Marsilius of Padua and Italian political thought of his time', in *Europe in the Middle Ages*, ed. by Hale, Highfield, and Smalley (London: Faber and Faber, 1965), 44–75; cf. from the opposite point of view Michael Wilks's remark, quoted by Rubinstein (*ibid.*, p. 45, n. 2): 'in general [...] by the *pars principans* Marsilius has in mind the Roman emperor.'

⁵ For example, see Carlo Pincin, *Marsilio* (Turin: Giappichelli, 1967), pp. 57–58, n. 6: 'Se Marsilio avrebbe pensato all'arengo, per esempio, non avrebbe scritto *universitas civium*'; see also pp. 105–06.

rather it is an act of deliberate ambiguity forming part of a rhetorical strategy designed to maximize the global appeal of the work.⁶

The question of how all this bears on the work of translation is actually quite complex. We have seen that the translator needs to decide on the meaning of words or phrases not just *per se*, but as they function within the text, and this necessarily involves the translator in her own reading or act of interpretation. Yet it seems that not all readings or interpretations should or can find their way into a translation. Supposing for example that the translator thinks that in his discussion of the *pars principans* Marsilius really does mean or intend either the emperor or the *podestà* of contemporary Italian civic practice. Would this warrant translating *pars principans* as either 'emperor' or '*podestà*'? I imagine everyone would agree that this would be a quite unwarranted act of violence on the text. Even if Marsilius really did have a specific figure in mind, by characterizing that figure as the *pars principans* he is giving it a functional description that goes beyond what is contained in the more specific designation. The translator would take a major liberty with the text if she recontextualized what the author had (presumably deliberately — although whether *that* kind of authorial intention matters is another question for debate) decontextualized. Again, let us take the reading which holds that the philosophical or scientific 'look' of Discourse I is deceptive: Marsilius is not offering a theory or propounding scientific truth, but trying to persuade or move his audience to a certain kind of action, and hence Discourse I is profoundly rhetorical rather than philosophical in nature. I doubt that there can be any translation of a series of apparently indicative propositions, or of references to Aristotle, which implies that they are not in fact in the indicative mood but are instead exhortatory or being used as an ideological weapon. However the translator reads the text in this matter, there appears no option but to play it straight and leave it up to readers to decide.

Other interpretative stances do, however, bear on the matter of translation and cannot be avoided. Let us take two examples: firstly, the problematic *universitas civium*. Here is a case where translators (even the most academic) into

⁶ Conal Condren, 'Marsilius of Padua's Argument from Authority: A Survey of Its Significance in the *Defensor pacis*', *Political Theory*, 5 (1977), 205–18; idem, *The Status and Appraisal of Classic Texts* (Princeton: Princeton University Press, 1985), pp. 189–95. Cary J. Nederman takes issue with Condren's position in *Community and Consent: The Secular Political Theory of Marsiglio of Padua's Defensor Pacis* (Lanham, MD: Rowman & Littlefield Publishers, 1995), pp. 19–24, arguing that what Marsilius is presenting is instead a generic political theory.

modern European languages cannot take refuge in literalism, because ‘university’ (*Universität, università, universidad, université*, etc.) simply means something quite different now. (The ‘university of citizens’ would suggest something more like the English ‘Open University’.) So the translator cannot escape deciding what it means — not just (as we have said) in medieval legal or political discourse generally, but within Marsilius’s text: and this will involve an act of interpretation of the text as a whole. Gewirth chose ‘the whole body of the citizens’, a choice which he does not explicitly discuss either in Volume I or in Volume II (the translation) of his *Marsilius of Padua: The Defender of Peace*, nor in his subsequent response to Jeannine Quillet and others.⁷ We must surmise, then, that he did not think that the mere notion of a corporative entity, which could be encapsulated simply by ‘body’, sufficiently conveyed the sense of this expression, at least in the *Defensor pacis*; instead he opted for a more emphatic locution which gestures toward the idea that no part is or can be left out. But by using ‘whole’ with its all-embracing overtones, his translation supports and forms part of his ‘republican’ (in the sense of ‘democratic’) view of the political philosophy of the text. By contrast, Jeannine Quillet’s less emphatic ‘l’ensemble des citoyens’ serves her understanding of the text, which places it in the context of contemporary imperial claims to jurisdiction over the *regnum Italicum*. For her, it is the corporate conception alone that is doing the work of legitimizing (ultimately) the emperor.

Let us take another, slightly different example. Gewirth argued that it is part of the strategy of Marsilius’s response to the papalists, and a main source of his originality among medieval political theorists, to exclude arguments from final causality (which ultimately end up involving God and by extension the pope in politics), and to focus solely on the efficient cause of political communities and their structure.⁸ Now, as Gewirth acknowledged,⁹ Marsilius in fact has quite a range of terms which Gewirth rendered as ‘efficient cause’, on the grounds that this is the traditional way of referring to ‘the concept’: *causa efficiens* or *effectiva*

⁷ Alan Gewirth, *Marsilius of Padua and Medieval Political Philosophy* (New York: Columbia University Press, 1951) (hereafter, this text is cited as *MPMPP*), and Marsilius of Padua, *Defensor pacis*, trans. by Alan Gewirth (New York: Columbia University Press, 1956) (hereafter cited as *DPa* along with discourse, chapter, section number, and/or page number) (publ. also as vols 1 and 2 of *Marsilius of Padua: The Defender of the Peace*); Alan Gewirth, ‘Republicanism and Absolutism in the Thought of Marsilius of Padua’, *Medioevo*, 5 (1979), 23–44.

⁸ *MPMPP*, 33–37.

⁹ *DPa*, p. lxix.

is one, together with *causa factiva*, which arguably comes to the same thing (both expressions involving the verb *facere*); but Marsilius also uses *causa motiva* and *causa agens*. To translate all of these as 'efficient cause', losing the involvement of the semantic fields of *movere* and *agere* (which do not coincide completely with that of *efficere* and *facere*), involves the judgement that this involvement is insignificant, or at least insignificant in comparison to the broad significance of Marsilius's appeal to efficient as opposed to final causality. And again this is a question of interpretation.

So much for the relation between interpretation and translation, which is common to all translations but (I think) particularly challenging with the *Defensor pacis*. A second difficulty — and one that I want to focus on for the rest of this paper, partly because I think it has received insufficient attention in the literature¹⁰ — is that in some sense the *Defensor pacis* is 'about' the language of politics itself, that is, about its own language. The *Defensor pacis* is, self-consciously, an intervention in what is presented as a compromised linguistic situation: much of the language that is currently in use to describe and analyse political phenomena cannot be used as it stands by one who genuinely wants to grasp the political realities of the day, because its terminology has been stretched and manipulated to include and, more importantly, to privilege metaphorical and/or 'improper' usages which support papal domination in disguise. Even where usage is neutral, the many different meanings need sorting out in order properly to understand the questions that need asking and answering. What makes Marsilius's analysis so interesting, however, is his argument that this problematic linguistic situation is a historical development. The contemporary Latin language of power and government is not an atemporal medium for reflecting political phenomena: that language has a history which is part and parcel of the political history of the Latin West, the Christian Roman Empire and the Roman Church. As a result, instead of being a neutral tool of analysis, for the most part its current usage in fact helps to maintain the distorted political situation in the genesis of which it is so crucially implicated. Even language that has not been distorted or manipulated is ineffectual as a counterweight because its 'proper signification' — on which Marsilius insists again and again — is not understood.

¹⁰ There are, for example, many studies of Thomas Hobbes's politics of language and his concept of, and appeal to, the 'proper signification' of terms in *Leviathan*; by contrast there is very little published that explicitly concerns *propria significatio* and language in the *Defensor pacis*.

How to remedy this situation? Marsilius's main move, of course, is to use Aristotle's *Politics* — in Moerbeke's (unbelievably academic!) translation — to bypass the above linguistic and political history. Moerbeke's translation bypassed history in the first instance simply because it was recent. But it did so in a second and more important sense because in its uncompromising (and sometimes unintelligible) literalism, it did not domesticate Aristotle's Greek to any prevailing Latin idiom and therefore did not implicate it in Latin history. Gewirth's notes to his translation draw attention, rightly, to the extent to which any translation of Marsilius is a translation of a translation, that is, a translation into English of a Latin which is itself a translation from the Greek.¹¹ While he focuses on Moerbeke's translation, he also comments, interestingly, on the Vulgate version of the New Testament as a parallel case of the phenomenon. But while I very much take his point, I do not think that the Vulgate New Testament is in any way the same sort of translation as Moerbeke's *Politics*. It is a Latin text in a way that Moerbeke's *Politics* is not: Jerome famously prescribed that one must translate from sense to sense, not from word to word, and therefore rendered the Greek fully into a Latin idiom. The Latin of the Vulgate became part of the Christian West and its history, and therefore Marsilius could not use it, *in the first instance*, as the key to unravelling that history, although he will of course insist that its language can be shown to be uncorrupted in the light of an analysis of corruption that he took from elsewhere. So we see Marsilius using a Greek text to crack open Latin discourse, using a Greek pre-Christian political analysis to crack open Latin Christian political history.¹²

The thirteenth-century reception and translation of Aristotle — and especially Moerbeke's astonishing work, for the reasons I have just suggested — was thus a linguistically creative moment that Marsilius exploited to provide people of all statuses with a new way of talking and thus a new way of thinking (or 'seeing'; the text abounds with visual metaphors). Armed with this new way of talking and thinking, people of all statuses will be empowered to resist the pope; without it, no resistance can be effective.¹³ Verbal liberation precedes

¹¹ *DPa*, p. lxvii.

¹² There are some interesting remarks that have been and can be made on the implications of his use of the Latin writers Cassiodorus and Sallust in this context, but I have no space to go into the question here.

¹³ Cf. *DPa*, I. I. 5: 'This common enemy of the human race will not be completely eradicated, nor the baleful fruits which it has so far produced wither, unless the evil of its cause or root is first exposed and convicted. Only by this route, and no other, can the coercive power

actual liberation, although Marsilius is clear that the former must *be* finished in act: Louis IV's (also known as Ludwig the Bavarian) political and military campaigns are the 'end' or 'finishing' of this work, *opus*, by which I think Marsilius means the *Defensor pacis* itself.¹⁴ Louis's action or *actio* is the final *dictio* (discourse, *diction*) of the defender of the peace. Nonetheless, changing the speech situation — linguistic politics — is in some ways as difficult as the actual politics themselves. Marsilius needs both to force existing Latin terminology to bear a new or restricted ('proper') sense, and to use new bits of language which have no settled meaning in existing Latin, and sometimes no meaning at all. He cannot fill out this new terminology — basically the Aristotelian terminology — with the contaminated vocabulary of current papal and imperial politics, so he deploys the exegeses of Arab scholars, the terminology of medical science and (although in a way that is almost always indirect) the civic vocabulary of the Italian communes. The resulting melee throws up manifold problems for the translator, especially, again, in Discourse I. Discourse II is a slightly different matter: Marsilius explicitly says that this discourse can stand alone, needing no other proof,¹⁵ and it is couched in a much more familiar language of imperial-papal polemic — although even here the terminology needs clarifying and restricting. The precise degree and contours of the linguistic *décalage* — shift in linguistic register — between the two discourses is another problem for the translator, but one that I shall have to leave aside for the present.¹⁶

One basic dilemma in this respect is how far the translator wants to go along with Marsilius's reconstructions of the 'proper signification' of various terms. Does she translate the terms as bearing the specific and often new sense that Marsilius wants to impose? If so, she risks simply eliding the problem with current verbiage that Marsilius feels so acutely, and making nonsense of his

of princes safely proceed finally to drive the dishonourable sponsors and obstinate defenders of this evil from the field.'

¹⁴ See *DPa*, I. I. 6: 'And with an especial regard for you, most noble Ludwig, Emperor of the Romans, as the minister of God who will give this work the ending it hopes for from outside.' 'This work' (*hoc opus*) could have the general sense of 'this task' (as Gewirth translates), but here I think has the more specific sense of 'this work'. This reading is supported by the verb *optat*, which is in the third-person singular and therefore cannot have the emperor as its subject, as Gewirth assumes; neither is it easy to see how a general intellectual enterprise could constitute a subject with a hope, whereas a specific book could plausibly be personified in that way.

¹⁵ *DPa*, I. I. 8.

¹⁶ See Pincin, pp. 105–08, for some remarks on this linguistic shift.

attempt to *define* these terms. If not, does she fail to capture the novelty of Marsilius's linguistic solutions? *Dominium* (as ever, in the translation of medieval political texts) and (specific to Marsilius) *regnum* are cases in point. As regards the former, Marsilius is, of course, trying to block the analogical use of the term so central to papalist hierocratic writing, offering in its stead a very narrow and precise definition that Jeannine Quillet not unreasonably translates into French, from the beginning, as 'propriété' (with the Latin in brackets).¹⁷ She encounters a problem directly, however, when Marsilius goes on to define *proprietas*, which she also translates as 'propriété'. She can hardly offer, as a translation of this definition, that "'propriété" signifies, in its first sense, the same as "propriété" taken in its first sense', and therefore she is reduced to using the Latin term *dominium* actually in the text at this point; even though, of course, this definition of Marsilius actually vindicates (at least in part) her initial decision to use 'propriété' to translate *dominium*.¹⁸ Gewirth's translation, 'ownership', is better from this point of view, though it too has its drawbacks when we come to the case of the natural *dominium* of human beings over their own actions: this comes out in Gewirth as a natural ownership of our actions, which sounds a bit too Lockean for Marsilius.

On the question of *regnum*, it is Alan Gewirth and Cesare Vasoli who anticipate Marsilius's new sense (or what they interpret as being Marsilius's new sense — I shall come back to this later) by using respectively 'state' and 'Stato' (the capital *S* is Vasoli's) to translate the term, whereas Quillet stays with the more literal 'royaume' (the Florentine vernacular has 'reami'). But 'state' has difficulties parallel to, and more serious than, those of Quillet's 'propriété'. Along with the necessity of brackets, Gewirth's translation implies that, according to Marsilius, the term *state* has four meanings, of which the most familiar is 'kingdom' in the sense of a temperate monarchy over a large number of cities or a province; but this is surely implausible. *State*, according to Gewirth's own notes, is the English term that best corresponds to Marsilius's own peculiar usage, i.e., only the fourth sense of *regnum*; hence it can't be used to cover all senses. Notoriously, Gewirth is also led to translate the *regnum*

¹⁷ Marsile de Padoue, *Le défenseur de la paix*, trans. by Jeannine Quillet (Paris: Vrin, 1968), p. 286.

¹⁸ Quillet, p. 288. Her note at page 286 indicates her difficulties: she would have preferred *domaine*, but rejects the option because the term is so impoverished in meaning in modern French; the same for *seigneurie*, the French equivalent of the Florentine vernacular translation's *signoria*.

Italicum as the ‘Italian state’, entirely losing its geographically and historically specific sense of that area of the old Lombard kingdom reincorporated in the empire in the tenth century. The *regnum Italicum* is itself one of those compromised pieces of language — could one say, *the* compromised piece of language? — and at the same time compromised political entities at which Marsilius’s historico-linguistic analysis is aimed. The ‘Italian state’ is not only meaningless, it de-problematizes what is critically in question.

If the ‘proper signification’ of the various key Latin terms that Marsilius singles out is one aspect of the problem of translating linguistic innovation in the *Defensor pacis*, the other is how to translate Marsilius’s use of Greek terms and transliterations. It is clear that Marsilius does not always know what these terms mean in the original Aristotle — but that is not the point: there was, after all, no stable understanding of Aristotle’s Greek available in this period. Marsilius, as much as every other commentator on Aristotle, was engaged in grafting meaning onto Moerbeke’s carefully neutral and formally unintelligible terms. But whereas Marsilius always makes it quite plain how he is redefining and understanding the Latin terms, vis-à-vis both normal everyday usage and specific papal distortions, he is not always very explicit about how he is reading Aristotle’s terms. This has to be reconstructed partly from the tacit dialogue he is conducting with other commentators on the *Politics*, and partly from the internal dynamics of the text. In teasing out those dynamics, the translator has to be open to the possibility that there may in fact not be any stable signification of these individual words, even within Marsilius’s text. Marsilius often tends to work with sliding equivalences and associative clumps of vocabulary which cannot be defined independently of each other, and he does this at critical points in his text. I want to illustrate these problems in relation to the Greek term *politeia*, transliterated by Moerbeke as ‘politia’, because trying to settle the correct translation of this term involves the question of the meaning of Marsilius’s most central political terms — especially *regnum* — and illustrates acutely the tensions involved in the slide over from a Greek to a Latin idiom, from the vocabulary of *polites*, *polis*, and *politeuma* to that of *civis*, *civitas* or *regnum*, and *principatus*.

It may be as well to begin by reminding ourselves of the original Aristotelian usage. Aristotle discusses *politeia* at the beginning of Book III of the *Politics*. The *politeia* (normally translated as ‘constitution’) is the order (*taxis*) of the ruling offices (*archai*), in particular the one that is ‘sovereign’ over all the others (*kyriotate*): ‘Now in every case the citizen-body (*politeuma*) is the sovereign

(*kyrion*); the citizen-body *is* the constitution.¹⁹ That is, to ask what the constitution is, is simply to ask what body is sovereign in ruling the city. I shall return to this equivalence shortly in connection with Marsilius. For the moment, we should remark on the fact that *politeia* is a kind of order: for it is this idea of *taxis* that is key to Aristotle's linking of constitution and law. 'For', Aristotle remarks in distinguishing a polis from an *ethnos* or nation, 'law (*nomos*) is a kind of order (*taxis tis*), and having good laws must be equivalent to being well-ordered, but a number which exceeds by too much is not able to share in *taxis*.'²⁰ 'For wherever laws do not rule, there is no *politeia*.'²¹ In this same book, however, Aristotle also offers a different sense of *politeia*, normally translated as 'polity', by which he means a specific *type* of constitution or *politeia*, i.e., a broad-based meritocracy.

Mario Grignaschi argued long ago that Marsilius was the first scholastic properly to appreciate, and to adopt, Aristotle's understanding of the *polis* or *civitas* as a sovereign political entity.²² Marsilius's reading of Aristotle is certainly worlds away from that of, for example, Albert the Great, who understands Aristotle's 'political rule', the mutual rule of citizens within a *civitas*, as a local phenomenon *within* a kingdom or realm.²³ By contrast, Marsilius offers in the second chapter of his first discourse a radical revision of the relation between what I translate as 'realm' and 'city', *regnum* and *civitas*. I follow Gewirth in translating *politia* literally as 'polity', for reasons that I hope will become clear:

¹⁹ *Politics*, trans. by T. J. Saunders, 1278b6 ff.: 'The "constitution" (*politeia*) of a city is the organisation of the offices, and in particular the one that is sovereign over all the others. Now in every case the citizen-body (*politeuma*) is the sovereign; the citizen-body is the constitution.'

²⁰ *Politics*, 1236a29 ff.

²¹ *Politics*, 1292a32.

²² Mario Grignaschi, 'La définition du "civis" dans la scolastique', *Recueils de la Société Jean Bodin pour l'histoire comparative des institutions*, 24 (1966), 71–100.

²³ Cf. Albert the Great's commentary on *Politics*, 1257a7 ff.: 'And "whenever" someone "is in control" of some community or nation with his own power, then they say that it is "royal rule". For the king is he who has rule over a nation with his own power. But when someone rules a city, "from the dictates of the discipline", that is, with laws and plebiscites and statutes, [and the] sharing is "in part", that is, regarding one particular city, and "subject" to a king, who constituted him on his behalf, then they say that it is "political rule"' (translation mine): Albert the Great, *Opera omnia*, ed. by A. Borgnet (Paris: Vives, 1800–1899), VIII: *Politicorum libri octo* (1891). See the remarks by N. Rubinstein, 'The History of the Word *Politicus* in Early-Modern Europe', in *The Languages of Political Theory in Early-Modern Europe*, ed. by Anthony Pagden (Cambridge: Cambridge University Press, 1992), pp. 41–56 (pp. 43–44 and notes).

We should be aware — so as to avoid any ambiguity which may arise from the multiplicity of terms — that this term ‘realm’ in one of its significations implies a plurality of cities or provinces contained under one regime. In this sense a realm does not differ from a city in terms of the form of polity, but rather in terms of size. On another understanding of the word, this term ‘realm’ signifies a particular type of polity or temperate regime, which Aristotle calls ‘temperate monarchy’. In this sense there can be a realm in a single city just as there can be in several — as was the case around the beginnings of civil communities, when in most cases there was one single king in each single city. The third signification of the term, and the most familiar, is a mixture of the first and the second. The fourth sense is something common to every type of temperate regime, whether in a single city or in several cities; Cassiodorus took it in this sense in the speech we placed at the beginning of this book, and it is in this same sense that we too shall use the term in determining the answers to our questions.²⁴

In his description of the first sense of *regnum*, it appears to be the fact of being contained under one regime or *regimen* that constitutes the *regnum* out of the various cities or provinces. The quantity of these does not make any political difference, i.e., a difference in terms of *politia*. This implies that whatever *politia* is, it involves starting with the existence of a single regime in whatever unit is in question. *Regnum* in the next signification, it would seem, *does* imply a political difference — because it is a particular *type* of polity. (Before we go on to examine what Marsilius means by that type, we should note here that Marsilius in this second definition appears to take *politia* as equivalent to *temperate* regime, not just any regime. By temperate regime he makes clear in Chapter 8 that he means one in which the government rules over willing subjects and according to a law that is made to the common advantage. With Aristotle, Marsilius defines the temperate forms of regime as monarchy, aristocracy, and polity taken narrowly as a broad-based meritocracy; the corrupt forms are tyranny, oligarchy, and democracy.)

Now having introduced this second signification of *regnum*, which appears to contrast with the first and so imply that there *is* a difference in terms of polity between a *regnum* in this sense and a *civitas*, he in fact does not make this explicit at all. His point is simply that *regnum*, as the species of temperate regime called monarchy, can exist in any size of civil community, including a *civitas*; and this implies that *civitas* is *not* itself a specific type of polity. The next signification of *regnum* is much the clearest, being a mixture of the two first significations: presumably we are to imagine a monarchy like France. The final

²⁴ *DPa*, 1. 2. 2.

signification plunges us back into darkness: it is something that every temperate regime shares, *commune aliquid*. But what *is* this something?

In an excellent and stimulating article entitled ‘Il “regnum” di Marsilio tra la “polis” aristotelica e lo “stato” moderno’, published in 1979,²⁵ Enrico Berti notes (following the work of Gewirth and Quillet) that in the first few chapters of Discourse I, Marsilius progressively assimilates *regnum* and *civitas*. This assimilation is mediated by two key terms: *regimen civile* and *civilitas*. On the subject of the first, Berti argues that by understanding *regnum* as *regimen civile* in the very first chapter, Marsilius immediately lets drop any reference to monarchical constitutions. However, this is to anticipate the sense of *civile*, which is precisely part of what is in question. It seems clear in the second chapter, where Marsilius associates *regnum* with *regimen temperatum*, of which temperate monarchy is a species, that temperate monarchies are still *regna* in the fourth sense, which is to say that they are civil regimes. I suggest, therefore, that *regimen temperatum* and *regimen civile* are equivalent terms for Marsilius. On the subject of the second term, *civilitas*, Quillet excellently notes that this is the word that the *Ethica vetus* and the *Ethica nova* use to translate *politeia* (which Moerbeke’s translation of the *Politics* simply transliterates as ‘*politia*’).²⁶ I would add furthermore that Marsilius in fact clearly indicates that he understands *civilitas* as *politia*, as he speaks in Chapter 13 and Chapter 16 of Discourse I of *civilitas seu politia*.²⁷ In the opening chapter of Discourse I, Marsilius talks of *civilitates et regna*, and throughout Discourse I he talks of *regnum aut civitas*, in sentences which clearly imply their equivalence.²⁸

On these grounds, Berti argues that Marsilius’s key move within the Aristotelian tradition was to fuse *polis* or *civitas* with *politeia* or *civilitas*. *Civitas* in Marsilius is no longer the concrete political community or *polis* of Aristotle, but a more abstract structure which is the *regnum*, having certain affinities with the modern usage of the word *state*. It is no longer ‘the order of those *inhabiting* a city’, as for example Aquinas had understood it, but the city (or *regnum*) itself. Hence, the city ‘is no longer simply a multitude of citizens sufficient to itself, but it is a real and proper juridico-political institution, that is, the *universitas*

²⁵ Enrico Berti, ‘Il “regnum” di Marsilio tra la “polis” aristotelica e lo “stato” moderno’, *Medioevo*, 5 (1979), 165–81.

²⁶ Quillet, p. 52, n. 16.

²⁷ *DPA*, I. 13. 4; also at *DPA*, I. 16. 19.

²⁸ E.g. throughout *DPA*, I. 17, but the equivalence is ubiquitous.

civium understood as the legislator'.²⁹ As such it is the wielder of indivisible sovereign power, and this is its affinity with the modern 'state'.

Pursuing this analysis, Berti argues that if Marsilius fused *polis* with *politeia*, his parallel move was to detach *politeia* from *politeuma*. That is, while Aristotle had thought of the *polis* as the political community, and had identified the *politeia*, or 'constitution', with the *politeuma*, i.e., the sovereign citizen-body ruling the *polis*, Marsilius in contrast tended to identify *polis* or *civitas* and *civilitas*, and it is *politeuma* which becomes separated from *politeia*. *Politeuma*, in Marsilius, is *principatus* or the *pars principans*, the government created by the citizens as a body to rule according the law of the *civitas* which the citizens collectively have made. As such, it is something different from the body of citizens, who have a legislative and (ideally but not always) an elective function, but do not, as a body, rule the city.

Berti's analysis is forceful and often persuasive. But there are several problems with it from the point of view of Marsilius's text. Firstly, Marsilius does not in fact detach *politeuma*, understood as *principatus*, from *politeia* so clearly. Chapter 8 of the first discourse is entitled 'On the generic kinds of polities or regimes — temperate and distorted — and their division into specific types', but after an introductory paragraph Marsilius begins the discussion with the words 'there are two generic kinds of princely part or principate, the one well-tempered and the other distorted'.³⁰ Now Chapter 8 supports Berti in aligning Marsilius's *principatus* with Aristotle's *politeuma*, because Marsilius in this chapter uses the terminology of *dominans* to describe the position of the *pars principans* within the city, *dominans* being the equivalent of the Greek *kyrion* in Aristotle's definition of *politeuma*: 'Together with Aristotle, *Politics* III, chapter 5, I call that kind "well-tempered" in which what dominates exercises its principate for the common advantage in accordance with the will of those who are subject; "distorted", that in which this is lacking'. But the fact that Marsilius thinks that the question of *principatus* is the same question as that of *politia* seems to indicate that Marsilius, even if he did not think of *politia* and *principatus* as formally equivalent, at least thought that the two were connected to the extent that it is impossible to think of the one without the other. There is no *politia* that does not have a particular type of *principatus* or *dominans*, independently of which that *politia* cannot be identified.

²⁹ Berti, p. 176 (my translation).

³⁰ *DPa*, I. 8. 2.

Again, in a passage from Chapter 13 where he is defending his thesis that the citizens as a body are the legislator, Marsilius explicitly cites the term *politeuma* in an appeal to Aristotle's idea of *to kreitton meros*, the *valentior pars*. The part of the city that wants the *politia* to remain must by definition be stronger than that which does not want it to do so: 'and that they should be of such a multitude in the *politeuma*' — Marsilius glosses: 'sc. the insolent, or those who do not care to live in a civil manner (or: "in a *civitas*" — *civiliter vivere*)' — 'that they are stronger than all of these' — Marsilius glosses: 'viz. those who want to live a political life (or: "in a *politia*" — *politizare*)' — 'this is impossible'.³¹ Here it seems that Marsilius does not read *politeuma* as *principatus*, but more as *politia* or *civitas*.

In complete contrast to Berti, Gewirth's notes show that he thought Marsilius had simply misunderstood *politeuma* completely³² — I think because of a misreading on his part of the above passage (the gloss does not refer to the *politeuma* but to the 'they') — and that he used *politia* as a term close to that of government or *principatus*. According to Gewirth, Marsilius could not pick up the full range of the original Aristotelian sense of *politeia* because, for Marsilius, there is only one legitimate type of constitution, that in which the legislator holds sovereign authority.³³ He concedes, however, that Marsilius did appreciate and use the narrow sense of *politeia* as a particular *type* of constitution.

I could cite other instances and solutions from other translations, but I hope what I have said is enough to indicate the complexity of the problem of the meaning (and so translation) of *politia* in the *Defensor pacis*. As for myself, I do not think that *politia* has in fact any one single meaning in the *Defensor pacis*. To the degree that it is assimilated to *regnum* and *civitas* via the mediation of *civitas*, *politia* means — and indeed helps to contribute to — what I think is the sense of the two former terms, i.e., the basic structure of the political, a generic structure or order of civility (Aristotle's *taxis*). This is what any temperate or civil regime must have in order to count as such (though I do not myself think this justifies the translation of 'state!'). But it seems clear to me that Marsilius also uses *politia* in a second, more Aristotelian sense, which involves an essential reference to the specific *type* of principate or government involved in a particular community — what we might perhaps call the constitution. The

³¹ *DPa*, I, 13, 2.

³² *DPa*, p. lxxix.

³³ *DPa*, p. lxxix.

fact that there is only one true structure of the political does not mean there is only one legitimate *constitution*; this is to confuse the first two senses of *politia*. Marsilius also uses a third sense of the term, as everyone acknowledges, i.e., the narrow understanding of polity as a broad-based meritocracy. Does that mean that the translator should use three different terms to translate the different usages of *politia*: for example, ‘political structure’, ‘constitution’, and ‘polity’?

My sense is that the answer to this question is ‘no’, for the reason that it is not clear to me that the different senses are entirely distinct, but tend instead to slide into one another. Marsilius defines the third sense in Discourse I, Chapter 8, as follows: ‘Polity, albeit in one of its significations it is something common to every kind or type of regime or principate, nevertheless in another implies a certain specific type of tempered principate in which every citizen has some share in principate or counsel, in turn and according to his rank, means, or condition, and also for the common advantage and according to the will or consent of those subject.’³⁴ The phrasing of this definition is very close to his definition of the citizen — the member of a *regnum/regimen civile/civitas/civitas* — *per se* (i.e., irrespective of ‘constitution’) in Chapter 12: ‘I call a “citizen”, in accordance with Aristotle in chapters 1, 3 and 7 of *Politics* Book III, one who participates in a civil community, in principate or counsel or the judicial, according to his rank.’³⁵ Furthermore, we might also note that ‘polity’ in this third sense is also the only type of constitution for which Marsilius’s definition does not include a reference to something ‘dominant’ or *kyrion*. Could it be that for Marsilius, polity as a specific type of *politeia* is called by the generic term because it is in some sense the ‘focal meaning’ of political government and of the political generally? I prefer this suggestion, which yields a kind of sliding scale of the political. Marsilius explicitly allows that nonelected monarchies, for example, can be temperate, i.e., civil, regimes, governed by a law which is to the common advantage; but they are *less* well-tempered than elected forms of government, because election guarantees *more* willing subjects, which is the key mark of the political. In parallel, a citizen of a polity (narrowly understood) will be *more* of a citizen, live a more civil or political life, than one of a hereditary monarchy. The three different senses of *politia* slide into each other to create a central sense of the political from which more marginal and outright divergent cases can be analysed.

³⁴ *DPa*, I. 8. 3.

³⁵ *DPa*, I. 12. 4.

As a second and related conclusion, the case of *politia* draws attention to a phenomenon others have noticed before me, that is, the overlap of a descriptive and a normative political vocabulary in Marsilius. Aristotle's *politeia* simply means the order of a political community — any political community: this is why *politeia* (taken generally) has to be qualified as good or corrupt. Marsilius is heir to this analysis in Chapter 8 of Discourse I, in which *politia* is explicitly taken to include distorted or corrupt regimes, whereas *regnum* or *civitas* explicitly does not, as we have seen. But Berti and others are entirely right in pointing out that insofar as Marsilius associates *politia* with *regnum* and *civitas* through the mediation of *civilitas*, it does not imply any kind of political organization but a civil or civilized community, capable of creating the conditions for humans to achieve their ends on earth and (perhaps) in heaven.³⁶ Thus it seems that while *civilitas* and *politia* are sometimes taken as equivalents, *civilitas* — the Latin term — is always normative whereas *politia* is not. Thus, whereas Aristotle had said categorically, 'where laws do not rule, there is no *politeia*,' Marsilius quoting the sentence adds: 'supply, "temperate"'.³⁷ Humans can either live a civilized life under the rule of law in a temperate polity, or they can live an uncivilized life under the personal sway (the despotism) of one individual or group of individuals in a corrupt polity or a barbarian nation — effectively losing Aristotle's distinction between any kind of *politeia*, even a corrupt one, and the barbarian *ethnos* which is not a political form at all. The contours of the political had changed by 1324; and in parallel I suggest that ultimately, despite the crucial role of the Greek terminology in Marsilius's argument, it is the Latin vocabulary of the civil, of *civilitas*, that must carry the emotional weight of the text for a Latin readership.³⁸

³⁶ Thus, for example, Marsilius argues in Chapter 12 that citizens must make the laws of the city for themselves, 'because "the city is a community of free men"', as is written in *Politics* III, chapter 4, any and every citizen should be free and not suffer the "mastership" [*despotiam*], i.e. servile dominion, of another. But this would not be the case if some one or few of the citizens passed law upon the body of the citizens on their own authority; for in legislating in this way, they would be the masters of the others.' As this is said not to be the case with oligarchy, it follows that oligarchy is not a *civitas*, even though it is a *politia* (of a corrupt kind).

³⁷ *DPa*, I. II. 4.

³⁸ Quillet (as for note 26) gives a quotation from Dante's *Convivio* which seems very relevant in this context: 'Lo fondamento radicale de la imperia majestade [...] e la necessità de la umana civilitade.'

DIVINE AND HUMAN WRITINGS
IN MARSILIUS OF PADUA'S *DEFENSOR PACIS*:
EXPRESSIONS OF TRUTH

Floriano Jonas Cesar

Marsilius of Padua is famous for opposing the papacy. The *Defensor pacis*, his major work, conveys an unreserved condemnation of the papal political and ecclesiastical policies in the fourteenth century. Finished in 1324,¹ the treatise is much less compromising than other plans of reform for the Church that are articulated in the same period. John of Paris and Dante, to quote a royalist and an imperialist, advocate the separation and autonomy of temporal and spiritual powers.² John conceives only an indirect power of the king (or emperor) to depose the pope by summoning a general council, whereas the pontiff can induce the people to remove the monarch. In contrast with the moderate John of Paris and Dante, Marsilius denies the universal authority of the Roman bishop. He asserts that the papal primacy is not divine but human and somehow fraudulent. To him, the conflicts between

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¹ See Marsilius von Padua, *Defensor Pacis*, ed. by Richard Scholz, *Fontes Iuris Germanici Antiqui*, 2 vols (Hannover: Hahnsche Buchhandlung, 1932/33), III. 3. 1: 'Anno trecenteno milleno quarto vigeno Defensor est iste perfectus festo baptiste.' Hereafter, citations of this text appear as *DPb* along with discourse, chapter, and section number, followed by page and line number in parentheses. The extracts in English follow the translation by Alan Gewirth (New York: Columbia University Press, 1956).

² See John of Paris, *Tractatus de Potestate Regia et Papali*, in Jean Leclercq, *Jean de Paris et l'Éclésiologie du XIII^e Siècle* (Paris: Vrin, 1942), pp. 171–260; also Dante, *Monarchia*, ed. and trans. by Prue Shaw (Cambridge: Cambridge University Press, 1995), Book III (pp. 98–148).

Boniface VIII, Clement V, and John XXII on the one side, and Philip the Fair, Henry VII, and Louis IV of Bavaria on the other, follow from an old trend of the papacy to usurp secular jurisdictions.³ These disputes are not even the end of the story, as the popes intend to dominate all the kingdoms and cities. Accordingly, Marsilius regards force as the only effective way to restrain their ambitions.⁴ His strategy consists essentially of resistance and fighting against them. To this enterprise, he calls upon everyone, the princes in general, and especially Emperor Louis of Bavaria, to whom the *Defensor pacis* is personally addressed.⁵

The views of John of Paris, Dante, and Marsilius should not conceal the methodological difficulties involved in defying the Roman Curia, however. This is particularly true about the argumentative employment of divine and human writings. In fact, scholars from the fourteenth century (and in the Middle Ages at large) quote extensively saints, philosophers, theologians, chroniclers, jurists, and the Bible in support of their opinions. Their disputes entailed a significant amount of discussion about intellectual tradition, and success often depended on making one authority (or an interpretation of it) prevail over another. John of Paris, for instance, turns to the very canonical decrees and decretals to favour Philip the Fair against Boniface VIII.⁶ He explores the ambivalences of canon law to defend the equilibrium between the royal and the papal powers. Marsilius handles an exegetical apparatus, too.⁷ The radical character of his views, however,

³ See *DPb*, I. 19. 8–12 and II. 23–26 (131, 4–136, 10, and 440, 13–518, 6). For Marsilius's psychological analysis of the papal policies, see Floriano Jonas Cesar, 'Marsilius of Padua: Intellect, Appetite and Action', in *Intellect et Imagination dans la Philosophie Médiévale: Actes du XI^e Congrès International de Philosophie Médiévale de la Société Internationale pour l'Étude de la Philosophie Médiévale (S.I.E.P.M.), Porto, du 26 au 31 août 2002*, ed. by M. C. Pacheco and J. F. Meirinhos, *Rencontres de Philosophie Médiévale*, II, 3 vols (Turnhout: Brepols, 2006), III, 1915–25.

⁴ See *DPb*, II. I. 1 (138, 4–6): 'A quibus quidem ipsos revocare sermone veridico, quantumcumque etiam manifesto, difficile fiet.' Also *DPb*, I. 19. 13 (136, 16–20).

⁵ See *DPb*, II. I. 1 (138, 6–9): 'Eos tamen misericors Deus per gratiam revocare dignetur, ipsorumque violentam potenciam compescat ipse, compescantque sibi fideles tam principes quam subiecti, quorum omnium profecto inimicantur quieti.' Also *DPb*, I. I. 5 (7, 12–15) and I. I. 6 (8, 2–5): 'in te quoque respiciens singulariter, tamquam Dei ministrum huic operi finem daturum, quem extrinsecus optat inesse, inclitissime Ludovice Romanorum imperator.'

⁶ See, in particular, *De Potestate Regia et Papali*, XIII (pp. 211–16).

⁷ *DPb*, II. 2 and 12 (143, 1–152, 7, and 263, 13–274, 27), for example, defines the meanings of some words, while *DPb*, II. 28. 1 (529, 8–23) regulates the mystical interpretation of the Bible.

requires more than the sole exegesis of well-established works. The *Defensor pacis* possibly would not be able to sustain that the medieval papacy is a fraud by manipulating any number of passages from the *Decretum*. The treatise rather seeks to circumscribe the importance of any writing as proof.⁸ Such circumscription is what eventually provides Marsilius with a firm ground for a deep and comprehensive condemnation of the papal policies.

This essay aims to show that the demonstrative use of traditional texts in the *Defensor pacis* is grounded in certain conceptions of truth. We first describe how Marsilius and the Pope prove an opinion, especially the key role of time-honoured writings in their argumentation. The authority of the Scriptures and its nonrational significance are then considered. The subsequent topic deals with the progressive and cumulative notion of science that lies behind Marsilius's employment of established philosophical texts. Finally, we examine the nature of his confidence in divine and human works.

Methods of Proving

Although Marsilius does confront the pontiff, one must bear in mind that his antagonism relies on arguments, and he shares with his adversary some argumentative methods. For our purposes, it does not matter whether this sharing is based on fact or comes from a translation of the papal views into the Marsilian methodological framework. The decisive point remains that, without some agreement in the procedural field, confrontation would be impossible, or at least theoretically irrelevant.

If we follow the *Defensor pacis*, the Pope and Marsilius ground their opinions on the shared belief in some 'authors',⁹ on the experience of individual events, and on logical demonstrations whose premises themselves have support in the previous procedures or intuition. In short, both of them rely on proofs by 'authority', experience, and reason. (The first denotes here any recognized author, as, rigorously speaking, the book does not apply the term to philosophers.) On the one hand,

⁸ Relevant analyses on this topic are found in Alan Gewirth, *Marsilius of Padua and Medieval Political Philosophy* (New York: Columbia University Press, 1951), pp. 73–77; and Conal Condren, 'Marsilius of Padua's Argument from Authority, a Survey of Its Significance in the *Defensor pacis*', *Political Theory*, 5.2 (1977), 205–18.

⁹ The meaning of *auctor* in the fourteenth century includes the one who wrote, approved, inspired, or simply brought about a work. See M. D. Chenu, 'Auctor, Actor, Autor', *Archivum Latinitatis Medii Aevi*, Bulletin Du Cange (1926), 81–86 (p. 83).

‘authorities of the holy Scripture’¹⁰ and certain ‘reasons’¹¹ constitute the evidence which would prove that the clergy has coercive jurisdiction and the pope holds the supreme one. On the other hand, ‘approved histories’ support the historical aspects of Marsilius’s doctrine (in the *De translatione Imperii* too),¹² while arguments by reason, experience, and authority are the bricks forming most of his theses in the *Defensor pacis* (and in the *Defensor minor* as well).¹³

Among these kinds of proof, authority is prominent in the Marsilian and the papal sides. The Bible predominates in the popes’ field. Their ‘reasons’ are inferior in number and all of them except the transfer of the empire require the sacred texts. To state, for instance, that the ruler of the soul is superior to the ruler of the body counts only if one can prove this ruler to be the Christian priest (now necessarily by biblical testimony).¹⁴ The reasoning is of no avail to the clergy otherwise. Marsilius, in turn, openly bases his theology and history in the authority of the Scriptures and ‘approved teachers of the Christian faith’, and in ‘approved histories’. His political philosophy depends very much on numerous Aristotelian citations,¹⁵ even if he affirms to proceed ‘by sure methods discovered by the human intellect’, based upon self-evident propositions.¹⁶ Essential aspects of his politics — such as the aim of the city, the classification of the regimes, the convenience of being ruled by the best laws rather than by ‘the best man without law’, the meaning of ‘citizen’, and the qualities of the perfect ruler — are

¹⁰ See *DPb*, II. 3. 1–9 (152, 15–155, 26). The expression ‘auctoritates sacre scripture’ appears in *DPb*, II. 3. 1 (152, 18).

¹¹ See *DPb*, II. 3. 10–15 (155, 27–158, 10). These arguments are called *rationes* in *DPb*, II. 28. 1 (528, 24), for example.

¹² See, for example, *DPb*, II. 18. 2 (376, 18–22) about how the Bishop of Rome assumed his primacy: ‘De consequentibus vero colligere possumus ex approbatis historiis.’

¹³ *DPb*, II. 11. 3 (54, 8–55, 7) is particularly illustrative: ‘Quod [determinationem omnium actuum civilium nequire fieri sufficienter per unicum hominum] quidem videre sat est experientia [...]. Testatur autem et hoc Aristoteles 2° Politice, capitulo 2° [...]. Et confirmatur id ratione [...].’ Also *DPb*, II. 6. 6 (203, 1–2): ‘Cui sentencie [Petri Lombardi] ratio suffragatur, et auctoritates attestantur’; and *DPb*, II. 28. 1 (528, 23–26): ‘Residuum autem huius dictionis est, scripture sive canonis auctoritates convenienter exponere ac humana rationes dissolvere.’

¹⁴ See *DPb*, II. 30. 1–2 (588, 21–592, 12).

¹⁵ The Ciceronian influence on Marsilius is relevant too. See Cary J. Nederman, ‘Nature, Justice and Duty in the *Defensor pacis*: Marsiglio of Padua’s Ciceronian Impulse’, *Political Theory*, 18.4 (1990), 615–37.

¹⁶ *DPb*, I. 1. 8 (9, 9–12).

explained by means of Aristotle's works and sometimes by his sole words without any support from reason or experience.¹⁷

Religious Authority

The argumentative significance of each one of the various writings in the *Defensor pacis* depends on its capacity to express the truth. The fundamental aspect to be considered here is certainty. Marsilius approaches this point with an eye to the papalist opinion that pontifical decrees are equivalent to decisions of the General Council, what would amount to their infallibility. He shows special concern about the consequences of such equalization vis-à-vis the attitude of Boniface VIII and John XXII toward the empire and kingdoms, and the latter's doctrine on evangelical poverty. Through an allegorical reading of the Scriptures, references to the Old Testament and the Dionysius's hierarchical conception of the universe, Boniface VIII concludes in the *Unam sanctam* that 'it is absolutely necessary for salvation that every human creature be subject to the Roman pontiff'.¹⁸ In the *Ad conditorem canonum* and *Cum inter nonnullos*, in turn, John XXII asserts, or implies, that Christ and the apostles had ownership. That being the case, to have possessions would not be incompatible with the priestly status.¹⁹

These circumstances are probably what lead Marsilius to focus on infallibility as the criterion to evaluate the sureness of a writing. Although he quotes Augustine, the Master of the Sentences Peter Lombard, and several other 'approved teachers of the Christian faith', he does not define precisely their relative authority. The *Defensor pacis* simply distinguishes all the works as falling within one of two categories: those that are absolutely true (the Scriptures, the necessary inferences from them, and the interpretation of their ambiguous passages made by the General Council); and those that are subject to falsehood (the rest).

¹⁷ See, for instance, *DPb*, I. 2. 3 (II, 17–20): 'suscipiamus cum Aristotele primo et quinto Politice sue capitulis 2º et 3º civitatem esse velut animatam seu animale naturam quandam.' Also *DPb*, I. 12. 4 (64, 19–22): 'Civem autem dico, secundum Aristotelem 3º Politice, capitulis 1º, 3º et 7º, eum qui participat in communitate civili, principatu aut consiliativo vel iudicativo secundum gradum suum.'

¹⁸ *Unam sanctam*, qtd. in *DPb*, II. 20. 8 (398, 5–7). The bull is published in the *Corpus Iuris Canonici*, ed. by E. Friedberg, 2 vols (Leipzig, 1879/1881), II, cols 1245–46.

¹⁹ The documents are found in the *Corpus Iuris Canonici*, II, cols 1225–29 and 1229–30, respectively. See *DPb*, II. 13–14 (275, 1–325, 12) for the discussion about poverty.

The Bible never errs because it was inspired by God, 'who neither can be deceived nor wishes to deceive'.²⁰ The hallmark of the Scriptures, however, is not simply divine inspiration, which Marsilius recognizes in any true doctrine, including his.²¹ Their distinctive feature lies in the fact that they are inspired by God immediately, not through human reasoning. Being so, they avoid the roots of error in man, namely, deformed nature, custom, malice, and ignorance.²² Therefore, if anything in them 'seems contrary to the truth', the cause must be human fault: 'the text is faulty', or 'the interpreter has not followed what was said', or very plainly the reader does not understand the passage.²³ What necessarily follows from the Scriptures is also certain, and so is the interpretation of the General Council on their ambiguous passages, as the Holy Spirit guides it.²⁴ All the remaining texts lack the immediate inspiration of God according to the *Defensor pacis*. This does not inevitably mean that they are always wrong or can never be certain. The question is whether there exists a route to certitude apart from divine revelation. In the religious field, the treatise clearly denies it on the basis of authoritative and factual proofs. Both the 'approved teachers of the Christian faith' as well as the popes are deemed subject to err. To begin with, Augustine himself distinguishes the Bible from his own writings, in which he

²⁰ *DPb*, II. 19. 4 (386, 26–28).

²¹ See *DPb*, I. I. 6 (7, 16–18, 16): 'si qua mihi gracia credita est, spiritu quoque confidentie ministrato desursum, a quo, teste Iacobo, sue canonice primo <capitulo>: *Omne datum optimum et omne donum perfectum, desursum descendens est a patre luminum*'; and *DPb*, I. 19. 13 (137, 9–15): 'Quoniam, ut indubitanter videre videor, desuper mihi datum est nosse sophisma et reserandi potestas.'

²² See *DPb*, I. II. 2 and 3 (53, 10–16, and 54, 8–13): 'affectio que iudicium pervertere potest [...]. Corruptitur adhuc iudicium propter iudicium ignoranciam.' Some other relevant passages are *DPb*, I. I. 8 (9, 9–12); I. 12. 5 (65, 12–15); I. 14. 6 (81, 8–10); and II. 20. 6 (396, 25–397, 7). Divine inspiration prevents malice and ignorance, *DPb*, II. 3. 12 (156, 21–24): 'et ipsius [legis divinae] lator immediatus est Deus, in quo nec error aut malicia cadere potest'; and *DPb*, II. 17. 5 (359, 16–23): 'quoniam in harum [divinae revelationis atque apostolorum communis deliberationis] neutra error aut malicia intervenisse videtur.'

²³ Augustine, *Epistola* 82, cited in *DPb*, II. 19. 5 (387, 4–8).

²⁴ See *DPb*, II. 19. 1 (384, 23–31): 'Est autem hoc, quod nullam scripturam irrevocabiliter veram credere vel fateri tenemur de necessitate salutis eterne, nisi eas, que canonice appellantur, vel eis que ad has ex necessitate sequuntur, aut scripturarum sacrarum sensum dubium habencium eis interpretationibus seu determinacionibus, que per generale fidelium seu catholicorum concilium essent facte.'

admits the possibility of falsehood.²⁵ Besides, the saints sometimes do not agree with each other, thus revealing their vulnerability to mistakes.²⁶ As to the pontiffs, substantial evidence points in the same direction. Marsilius recalls that some of them have been heretical, such as John XXII, who denies the supreme poverty of Christ.²⁷ There are also contradictions among the popes, which proves that one of them must be wrong.²⁸ Boniface VIII's *Unam sanctam*, for example, states that 'every human creature' must be subject to the Roman pontiff to be saved. Clement V's *Meruit*, to the contrary, releases the king and kingdom of France from this submission, declaring that 'the epistle of Boniface is in no way prejudicial to the afore-mentioned French king and kingdom'.

The importance of the Scriptures as proof varies in the *Defensor pacis* according to the Testament, the subject, and the different ways of interpreting them. Marsilius first recognizes a rupture between the Testaments. Although agreeing that both of them have been written by divine inspiration, he considers the Old Law nonbinding to Christians: 'since the priesthood has been changed, it is necessary that there be a change of the law also'.²⁹ This alteration means that 'the Christian faithful are not obliged to observe all the commands or counsels of the Old Law or Testament.' The believer is even forbidden to follow, for instance, its ceremonies, sacrifices, and legal commands.³⁰ There remains the New Testament, which Marsilius does not see as an authority in every field. It seems a secular writing in this regard. In his opinion, for example, the philosophers discovered almost everything about living well in this world. Nevertheless, their demonstrative relevance amounts to nothing when the subject is eternal life, since they could not prove that such life exists 'and therefore did not concern themselves with the means thereto'.³¹ A similar line of

²⁵ See *DPb*, II. 19. 5 (387, 12–17): '*Noli, lector scilicet, meis literis quasi scripturis canonicis inservire [...] In istis autem, quod certum non habeas, nisi certum intellexeris, noli firmiter tenere.*'

²⁶ See *DPb*, II. 28. 1 (529, 16–23): '*Quoniam et ipsi quandoque circa scripturam et preter scripturam sententiis ad invicem dissident, ut Ieronimus et Augustinus super illud 2 ad Galatas.*' Also *DPb*, II. 28. 10 and 23 (540, 19–541, 2, and 562, 29–563, 13).

²⁷ See *DPb*, II. 20. 6–7 (396, 15–397, 21).

²⁸ See *DPb*, II. 20. 8–12 (397, 22–400, 7).

²⁹ Hebrews 7. 12, qtd. in *DPb*, I. 10. 3 (49, 11–13).

³⁰ See *DPb*, II. 9. 10 (240, 19–25): '*non omnia que in Lege seu Testamento Veteri Iudaico populo consulta vel custodiri precepta fuerunt, observare tenentur Christi fideles; quinimo quorundam est ipsis observatio interdicta.*'

³¹ *DPb*, I. 4. 3 (17, 14–18).

reasoning applies to the New Testament.³² Responding to the objection that the evangelic law would be imperfect if it did not regulate men's controversies, Marsilius sustains that it is perfect for the purpose to which it was made, namely, to teach how to achieve salvation and avoid damnation. To his mind, Christ has not come into the world to establish rules about how to reach happiness in this life. Following the objector's point of view, one would have also to say that the evangelic law is imperfect because, as a matter of fact, 'it does not enable us to heal bodily ills or measure magnitudes or sail the ocean'.

Finally, Marsilius distinguishes the many ways of interpreting the Scriptures. To him, the divine message appears in the Bible as a command or a counsel, with a literal or a mystical sense, in intentions, words, and deeds.³³ He prefers the literal interpretation and confines the mystical one to those passages in which it is unavoidable. His approach could not have been any different, as the mystical sense tends to involve human interference, being consequently subject to mistakes. That is why, when a passage needs to be interpreted allegorically, he adheres 'to the more probable view of the saints', but rejects their interpretation if it is not compatible with the Scripture (the only one to contain the eternal and infallible truth).³⁴

The characteristics of Marsilius's exegesis are by no means arbitrary. They reflect his training as a physician³⁵ and compose a broad picture along with his

³² See *DPb*, II. 9. 12–13 (242, 5–244, 19).

³³ See *DPb*, II. 4. 1 and 4 (158, 28–159, 10, and 161, 8–12): 'adducere volumus veritates scripture sacre, precipientes aut consulentes expresse, tam literali sensu suo, quam mystico, secundum sanctorum interpretationem ac aliorum approbatorum doctorum christiane fidei expositionem'; 'monstrare volumus, quod ab officio principatus [...] secundum propositum sive intencionem, sermonem et operacionem seipsum et apostolos Christus excludere voluit et exclusit.'

³⁴ See *DPb*, II. 28. 1 (529, 8–16): 'auctoritates canonis sacri sive scripture, que mistica exposicione non egent, secundum ipsarum sensum literalem manifestum sequemur omnino; in quibus vero mistica exposicione indigent, sanctorum probabiliore adhibebo sentencie. Quas vero ipsorum auctoritate propria preter scripturam protulerunt sentencias, scripture sive canonis consonas recipiam; quas vero dissonas, reverenter abiciam, non tamen aliter quam auctoritate scripture, cui semper innitar.'

³⁵ A letter in verse by Albertino Mussato narrates the early interest of Marsilius 'physicum Paduanum' in medicine: 'Quesisti, num te leges audire forenses | Maluerim medice pociusue intendere physi. [...] Vadis ad egregium doctorem temporis huius | Teque locas lateri carptimque uolumina physis | Decurens uno perhibes quae sumpseris haustu.' The document is printed in Carlo Pincin, *Marsilio* (Torino: Edizioni Giappichelli, 1967), pp. 37–40. Testifying in the papal inquiry into the publication of the *Defensor pacis*, Francis of Venice mentions that

medically inspired conception of the Fall and salvation. Indeed, his account of the human decadence involves an interesting encounter between legal and medical traditions.³⁶ Original sin and Redemption are conceived in legal and medical terms, while medicine provides the model that will explain the plan of salvation as a process of cure. Man, the *Defensor pacis* explains, was created 'capable of participating in eternal happiness'. He was 'created in a state of original innocence or justice and also of grace'. He enjoyed 'perfect health' as well. In addition, nature produced 'for him the advantages and pleasures of the sufficiency of this life in the earthly paradise, without any punishment or suffering on his part'. Nevertheless, the first parents disobeyed the divine command not to eat the forbidden fruit and their disobedience brought about a couple of major consequences. To begin with, man became 'ill in the soul' and 'is born ill',³⁷ as he now lacks his original innocence and grace, and was dispossessed of sufficiency of the present life in Paradise. He was also 'punished by being deprived of eternal happiness' to which he was destined.

Each deprivation was treated in a different way. The sufficiency of this life is fulfilled by reason and experience, which create the city.³⁸ As to the eternal life, the remedy came from divine compassion. *Remedy* is Marsilius's word and reinforces the medical approach of his interpretation of God's acts. Marsilius might have in mind the traditional medical opinion that the physician heals a disease by restoring the body's equilibrium through a substance opposed to

Marsilius practised medicine in Paris. See Etienne Baluze, *Miscellanea*, ed. by Giovanni Domenico Mansi, 4 vols (Lucca, 1761–64), II, 280b: 'tamen aliquotiens associavit [Franciscus] dictum Massilium, tantum eundo videlicet spatiatum, & etiam visitando aliquos infirmantes Parisius, quia idem Massilius sciebat in medicina & interdum practicabat.'

³⁶ See *DPb*, I. 6. 1–6 (29, 4–32, 15).

³⁷ *Infirmare* and *infirmus* are translated here into 'to be ill' and 'ill' to emphasize the medical orientation of the sentence expressed in the contrast between 'infirmata est'/'infirmata' and 'sanitas': 'Ex hac siquidem transgressionem primorum parentum *infirmata est* secundum animam omnis humana successio et *infirmata* nascitur, que ante creata fuerat in statu *sanitatis* perfecte, innocentie atque gracie, privata quoque propter delictum suo finali optimo, ad quod fuerat ordinata' (*DPb*, I. 6. 2 (30, 1–6); italics mine). Gewirth prefers 'to weaken' and 'weak' in his translation of this passage.

³⁸ See *DPb*, I. 6. 1 (29, 12–17): 'In quo [statu innocentie] siquidem permansisset, nec sibi aut sue posteritati necessaria fuisset officiorum civilium institutio vel distinctio'; and *DPb*, I. 3. 5 (16, 1–5): 'Demum vero que necessaria sunt ad vivere et bene vivere, per hominum rationem et experientiam perducta sunt ad complementum, et instituta est perfecta communitas vocata civitas.'

the quality (hot, cold, moist, or dry) whose excess caused the imbalance. Accordingly, to treat human disobedience, God prescribed its reverse, namely, 'certain commands' to be obeyed. They 'would counteract the transgression and heal the disease of the guilty resulting from it'. 'Like an expert physician', God proceeded 'from the easier to the more difficult steps'. In other words, he increasingly strengthened the remedy, i.e., obedience. Initially, men were commanded to sacrifice the 'first fruits of the earth' and the 'first-born of the animals'. In the time of Abraham, something more difficult was given, namely, the 'circumcision of the whole male sex'. Next, 'God handed down to the people of Israel a law' wherein he set forth 'further commands' and 'appointed priests and levites as ministers'.

The same medical-legal perspective remains when Marsilius deals with the Incarnation, even though grace becomes involved. Salvation and damnation go on being the outcome of obedience, but now to the evangelical law. This law established 'commands and counsels of what must be believed, done and avoided', and also sacraments and ministers. To the man that observes such law and receives the sacraments, divine grace is given, strengthened once obtained, and restored if lost.

This conception of original sin and Redemption points to the nonrational significance of the Scriptures. The contrast with Thomas Aquinas is instructive here. Aquinas shows himself in general very concerned about the connection of supernatural revelation with reason. In the *Summa contra Gentiles*, he ascribes a pedagogical role to the Bible in alleviating man's practical difficulties to learn the divine truth and the limitations of our intellect.³⁹ To Marsilius, instead, the words of God do not intend to enlighten the human mind or to expand its natural capability. They simply express the divine will, the obedience of which heals a certain illness of the soul caused by the original disobedience.

The rational irrelevance of the Scriptures explains, or reinforces, central aspects of their authority: the very need of them along with the accessory role of human reasoning to salvation (that comes from obedience to God, neither to man nor to reason) and, in particular, the hiatus separating the Testaments. This latter point contains a decisive departure from other interpretations of the Bible. In fact, Marsilius believes that the Mosaic law benefited from divine inspiration and therefore was absolutely true, in the sense of correctly prescribing how to avoid damnation. The ancient precepts gave place, nevertheless, to the law of

³⁹ See Thomas Aquinas, *Summa contra Gentiles*, ed. by Ceslas Pera, Pierre Marc, and Pietro Caramello, 3 vols (Rome: Marietti, 1961-67), I, 3-5 (II, 4-8).

grace, which alone binds the Christians now. In the medical vocabulary of salvation, this change meant the end of a stage in the treatment of the soul and the beginning of a new phase. The old commandments hence became a prescription not to be followed. The situation is different if the Scriptures assume rational relevance. The divine institution of Moses' government is expressive in this regard. Thomas Aquinas, who acknowledges a rational sense in the Bible, translates the Mosaic government into Aristotelian terms as a mixed constitution of kingdom, aristocracy, and democracy, to conclude: 'Thus it is clear that the Law established the best system of government.'⁴⁰ In this manner, through reason, the Old Covenant maintains its argumentative force, supporting, in this passage, a certain regime. Marsilius, by contrast, when dealing with the same subject, reckons that 'we can say nothing through demonstration, but we hold it by simple belief apart from reason'.⁴¹ The explanation must be, as indicated, that religious belief does not lead to rational understanding.

Secular Writings

By demarcating in this way the relevance and consequently the proper use of religious works as proof, the Bible included, Marsilius keeps a large field of knowledge outside their influence. His political philosophy occupies this area. It does not oppose the Scriptures nor enhances their reach. Without the biblical truth as the starting point, he bases his politics on 'sure methods discovered by the human intellect'. This procedure does not prevent him, however, from grounding his arguments on long-established texts, especially Aristotelian ones. Nowhere in the *Defensor pacis* does he feel any contradiction between these 'methods' and employment of human writings. The reason is to be found in the way he conceives human truth.

Indeed, the references to secular writings in the *Defensor pacis* seem to follow from the joint and progressive way any science develops according to Marsilius.⁴² He learns from Aristotle that one single person always plays a minor role in the quest for knowledge: '[W]hat one man alone can discover or know by himself

⁴⁰ Thomas Aquinas, *Summa Theologiae*, ed. and trans. by David Bourke and Arthur Littledale, 61 vols (London: Blackfriars, 1964–81), XXIX, 270–71 (1a2ae, qu. 105, art. 1): 'Unde patet quod optima fuit ordinatio principum quam lex instituit.'

⁴¹ *DPb*, I. 9. 2 (40, 2–5).

⁴² See *DPb*, I. 11. 3 (54, 8–57, 17).

(that is, without using someone else's discoveries), 'both in the science of civil justice and benefit and in the other sciences, is little or nothing.' Marsilius cites the *Metaphysics* to affirm that science requires the work of many people, that each individual contribution means 'little or nothing', and that only 'by the contribution of all a great deal is accomplished'. The scientific venture is also progressive. The effort of a person is assimilated by his successors, and so on. As Marsilius says, 'It is in this way, then, by men's mutual help and the addition of later to earlier discoveries, that all arts and disciplines have been perfected.'⁴³

For such conception of knowledge, the great artist or scientist is the one who puts together and enhances other people's findings. Timotheus, the musician mentioned by Aristotle in the *Metaphysics*, Book II, Section I, is a good example of what Marsilius considers to succeed in a field: 'Timotheus would not have been so accomplished in melody if he had not had the melodies previously discovered by Phrynes.'

The progress of science and art actually constitutes the route to secular certainty (in contrast with immediate divine inspiration regarding religious matters). The *Defensor pacis* is yet scarcely clear (but not contradictory) about this topic. Discourse II, Chapter 19, Section 4, is of particular interest here. Speaking of human works in general, Marsilius asserts that 'no one is obliged to believe in their certainty or acknowledge their truth',⁴⁴ as they are liable to falsehood. By saying that, however, he does not (and cannot) support a sceptical approach to human knowledge. The writings mentioned in this passage are only the ones 'from the human contrivance of an individual or a partial group'. No reference is made to the joint action of many. Besides, he affirms that the necessary inferences from the Scriptures are free from falsehood, what requires one to be sure at least about the rules of inference.

More significantly, there is the fact that the sources of error — deformed nature, custom, malice, and ignorance, all of them bypassed by God's direct illumination — can pervert the mind of one person or a small group, but are avoided, or minimized, by the combined effort of a large number of people. The idea guides, for example, the defence of the legal regime against the arbitrary government of one man in the *Defensor pacis*.⁴⁵ The law, Marsilius affirms, is a universal command, which incorporates the understanding of numerous

⁴³ Logic is an exception here, as it was discovered by Aristotle alone. See *DPb*, I. II. 3 (56, 17–21).

⁴⁴ *DPb*, II. 19. 4 (386, 17–19).

⁴⁵ See *DPb*, I. II (52, 1–62, 4).

generations of citizens and hence escapes malice and ignorance that can always affect the judgement of an individual. The same thought might underlie his belief in 'sure methods' and 'necessary inferences'.⁴⁶ We have to concede, nonetheless, that he is silent as to whether the sureness obtained in this manner is definitive or can be still challenged.

In such an approach to the truth, there is no contradiction between employment of 'sure methods' and references to established writings. One and the other spring from the intellectual progress of humankind. Independence and novelty are not so important either. Marsilius seems rather concerned about connecting his ideas to both the eternal truth and the truth built over the course of time. Nevertheless, precisely because human secular truth is formed over the course of time, it is always incomplete. Independence and novelty are therefore not entirely absent from his doctrine. Neither does he behave as a simple disciple of Aristotle. On the contrary, he learns with the *Metaphysics* to employ previous discoveries in order to go beyond them. The very purpose of the *Defensor pacis* is to supplement Book V of the *Politics* by unmasking a singular cause of strife that Aristotle could not identify.⁴⁷ All in all, independence and novelty in secular matters are just two sides of the same coin, namely, the Marsilian joint and progressive conception of human knowledge.

Belief in Human and Divine Writings

To Marsilius, as we have seen, discussion on any subject whatsoever necessarily pushes us back to the past. The belief granted to human and divine writings or authors is, however, very different. The *Defensor pacis*, Discourse II, Chapter 19 gives us the decisive clues to this issue.⁴⁸ In the case of human texts, on secular or religious matter, confidence is not blind. Marsilius rather indicates that trust results from a process of understanding which involves experience, reasoning, and testimony (especially a qualified one). He says, for example, that one can

⁴⁶ See, for instance, *DPb*, I. 1. 8 (9, 10): 'viis certis'; I. 13. 2 (70, 22): 'per necessitatem'; and II. 19. 2 (385, 6–7): 'infallibili deduccione'.

⁴⁷ See *DPb*, I. 1. 7 (8, 17–19, 7): 'Est ergo propositum meum, auxiliante Deo, singularem hanc litis causam solummodo pandere. Nam earum que per Aristotelem assignate fuerunt, numerum atque naturam iterare foret abundans.' Also *DPb*, I. 1. 3 and I. 19. 3 (4, 20–5, 17, and 127, 5–15).

⁴⁸ See *DPb*, II. 19 (384, 15–392, 7), whose discussions are summarized in *DPb*, II. 28. 1 (528, 23–529, 23); and *DPb*, I. 15. 5 (88, 10–15).

learn through a 'sensible sign', 'such as punishment which has been inflicted upon its transgressors', or through a 'right reasoning', that a certain 'written document' is true and 'must be obeyed' as 'the law of the land'. A person can also find out through the 'testimony' of experts that the 'contents of the book' by Hippocrates 'maintain health and avoid illness'. The same principle applies to human works on religious subjects (exception made to the decisions of the General Council, which are inspired by the Holy Spirit and so are not exactly 'human'). The proper belief in them is also based on a certain understanding, viz., of their agreeing with the Scriptures.⁴⁹ Being grounded on reasoning, experience, and testimony, human writings can be improved and even disputed.

Marsilius's attitude toward confidence in the Bible has a completely different tone. He puts 'right reasoning' aside and presents 'sensible sign' and 'testimony' as simple means for the belief in the Scriptures. In the end, this trust is based on faith only. Paul, for example, believed in the law of Christ, 'first through a sensible miracle, and then by the faith which he had'. In the same way, most people are stimulated to believe by testimonies. As Marsilius says by quoting Romans 10. 17, 'faith sometimes begins "from hearing"'.⁵⁰ The belief in the Scriptures is therefore essentially blind. Moreover, it is not necessarily affected by changes in the reasoning, experiences, or testimonies that lead to faith.

Conclusion

The references to countless works in the *Defensor pacis* are neither illustrative nor arbitrary. They are means of proof arising from certain conceptions of truth. Mention of the Scriptures is related there to a medically inspired notion of the Fall and salvation, which illuminates the several levels of biblical authority and the sharp distinction between divine and human truths. Citation of secular writings, in contrast, has to do with the joint and progressive character of human science. In both cases, confidence is always involved. However, while the belief in the Bible is grounded on faith, the trust in human texts, regarding both religious and secular issues, is based on reasoning, experience, and testimony.

This view about the argumentative significance of authorities is what allows Marsilius to wage his strongest attacks against the papacy and to provide a sound theoretical foundation for the ruler. The main features of the papal exegesis are

⁴⁹ See especially *DPb*, II. 19. 5 (387, 8–17).

⁵⁰ *DPb*, II. 19. 10 (392, 3–4).

disqualified: the appeal to the canonical decrees, the metaphorical reading of the Bible, and the recourse to the Old Testament. By the same token, however, Marsilius undermines the religious support for the power of kings and emperor. Indeed, the conflicts between spiritual and temporal rulers from at least the time of Pope Gregory VII should not be allowed to conceal the fact that the imperial (and kingly) authority relied to a great extent on doctrinal sources which also supported the papal power. Scripture provides a particularly good illustration of this common ground regarding the use of authoritative texts. It was adduced to substantiate the authority of the king over his subjects, God's approval of the Roman Empire,⁵¹ and, at the same time, the divine mission of the pontiff on earth along with his consequent authority over temporal matters.⁵² By denying the possibility of any political theology, Marsilius finds in the people the sole foundation not only of cities but also, quite paradoxically, of kingdoms and empire. This is the natural outcome of a doctrine that pushed so far its criticism of the Roman Curia in order to defend every regime.

⁵¹ See Dante's *Monarchia*, II. 10–11 (pp. 90–96): 'Dico ergo quod, si romanum Imperium de iure non fuit, Cristus nascendo persuasit iniustum' (p. 92); and 'Et si romanum Imperium de iure non fuit, peccatum Ade in Cristo non fuit punitum' (p. 94). Also Bartolus of Saxoferrato, *De Regimine Civitatis*, in *Politica e Diritto nel Trecento Italiano. Il 'De Tyranno' di Bartolo da Sassoferrato (1314–1357). Con l'Edizione Critica dei Trattati 'De Guelphis et Gebellinis', 'De Regimine Civitatis' e 'De Tyranno'*, ed. by Diego Quaglioni (Florence: Leo S. Olschki, 1983), pp. 147–70: 'Ex eo quod dicit: "Quem Dominus Deus tuus elegerit", sciendum est quod omnis rex aut immediate a Deo eligitur, aut ab electoribus inspiciente Deo' (p. 166, ll. 405–07). Also *Commentary on the Digest* (Lyons, 1527), 49.15.24 (p. 236, col. b): 'Et forte si quis diceret dominum imperatorem non esse dominum et monarcham totius orbis, esset hereticus, quia diceret contra determinationem ecclesie, contra textum s. evangelii dum dicit "Exivit edictum a Cesare Augusto, ut describeretur universus orbis", ut habes Luc. ii.vi.iii, et ita etiam recognovit Christus imperatorem ut dominum.'

⁵² See James of Viterbo, *De Regimine Christiano*, in *Le Plus Ancien Traité de l'Église. Jacques de Viterbe 'De Regimine Christiano', 1301–1302*, ed. by H.-X. Arquillière (Paris: Gabriel Beauchesne, 1926), II. 9 (pp. 268–78): 'Est etiam superior dignitate et causalitate omni temporali potestate, ideo concludi recte potest quod, in summo pontifice, preexistit plenitudo pontificalis et regie potestatis' (p. 268).

MARSILIUS OF PADUA'S CONCEPTION OF NATURAL LAW REVISITED

Holly Hamilton-Bleakley

It has often been asserted by scholars working on Marsilius of Padua within the past century that Marsilius represents an important departure from 'traditional' medieval theories of law.¹ There are several ways in which this departure is asserted as manifest, but two assertions seem to be especially prominent, which are essentially connected: one is that Marsilius is lacking a theory of natural law, and the other is his definition of human law as being essentially characterized not by reason, but by coercive force.

In this paper, I should like to revisit the claim that Marsilius is lacking a theory of natural law, not necessarily to assert that this claim is wrong, but to attempt to clarify the elements of which a medieval theory of natural law could be said to consist, and to offer some suggestions as to how Marsilius's approach to politics makes use of these elements. I should like to do this through examining the method that Marsilius employs in the *Defensor pacis* to make his case for a secular state, which I take to be a self-consciously *scientific* method, in which Marsilius proceeds from first principles, which he attempts to make self-evident, to necessary conclusions. As I read Marsilius, it is in his scientific method that he is asserting his authority and pitting it against that of the papacy. Indeed, Marsilius sees his authority as deriving from his argument, and his argument derives authority from its demonstrative method — that is, from its necessity.

¹ For a discussion of this assertion, see Ewart Lewis, 'The "Positivism" of Marsiglio of Padua', *Speculum*, 38 (1963), 541–82 (pp. 541–43).

I shall argue that this scientific method for politics has interesting similarities with natural law theories in ethics, and that these similarities require us as scholars to make a conscious articulation of what might be the differences between the principles of a human science and the natural law. Specifically, I will be looking at what can be said to be the distinction between Marsilius's principles of the human science of politics and Aquinas's principles of the natural law. However, before I launch into the main part of my paper, I want to mention briefly one of the many arguments concerning the lack of natural law in Marsilius, namely Alan Gewirth's.

According to Gewirth, the traditional notion of medieval natural law consists of a body of self-evident principles which one used to judge the rationality, validity, and justice of human law. So, by Gewirth's reading, if Marsilius deviates from this, he does not have a theory of natural law. In Discourse II, Chapter 12, Marsilius gives his famous definition of natural right, in which natural right is used equivocally to describe two different things: First, according to Aristotle, natural right 'is that statute of the legislator with respect to which almost all men agree that is honourable and should be observed';² second, natural right is also defined by some as 'the dictate of right reason in practical matters, which they place under divine right'.³ 'But', Marsilius says,

the word 'natural' is used equivocally here and above. For there are many things which are in accordance with the dictate of right reason, but which are not agreed upon as honourable by all nations, namely, those things which are not self-evident to all, and consequently not acknowledged by all.⁴

Both of these definitions ring alarm bells with Gewirth. He sees the first definition as a complete departure from the Ciceronian and later Thomistic tradition of natural law, which consisted of 'principles naturally known', or self-evident principles, since Marsilius bases the universal acceptance of natural right not on universal rational apprehension, but upon legislative enactment.⁵ This

² Marsilius of Padua, *Defensor Pacis*, ed. by Alan Gewirth (New York: Columbia University Press, 1956), II. 12. 7. Hereafter, citations of this text appear as *DPA* along with discourse, chapter, and section number; all Latin quotations are from Marsilius von Padua, *Defensor Pacis*, *Fontes Iuris Germanici Antiqui*, ed. by Richard Scholz, 2 vols (Hannover: Hahnsche Buchhandlung 1932/33).

³ *DPA*, II. 12. 8.

⁴ *DPA*, II. 12. 8.

⁵ Alan Gewirth, *Marsilius of Padua and Medieval Political Philosophy* (New York: Columbia University Press, 1951), pp. 148–49. Hereafter, citations of this text appear as *MPMPP*.

departure from natural law as self-evident principles which are independent of legislation is, according to Gewirth, made even worse through Marsilius's second definition, in which he had asserted that natural right could also be the dictate of right reason. Because Marsilius had said that these two senses of natural right were used equivocally, Gewirth takes this to mean that Marsilius sees no connection between them — that is, between natural right as universal self-evident principles on one hand, and as the dictate of right reason on the other.⁶ With this connection lost, there is no logical relation between the universal and the particular, and therefore, no higher criteria for judging the particular dictates of reason.⁷ Thus, in this definition Gewirth believes that Marsilius's notion of natural law has lost its status both as a body of self-evident principles and as a norm to which practical reason is to be conformed.⁸

For the moment we can set aside Gewirth's concerns about the relationship between these two 'equivocal' senses of natural right, and focus only on the first definition that Marsilius gives, for it is in this definition that we are presented with what is considered to be Marsilius's main rejection of 'traditional' natural law theory, as well as his commonality with Aristotle's notion of natural right. For, in defining natural right as 'that statute of the legislator with respect to which almost all men agree that it is honourable and should be observed', Marsilius is not only rejecting the idea of the natural law as universal because it is self-evident to all independent of legislation, but he is also (and therefore) rejecting the idea of the natural law as an extra-legal, unchanging standard against which the positive laws of a community should be measured and judged. This latter idea is considered by many scholars to be the defining characteristic of traditional natural law theory, exemplified in the Stoic and Thomistic conceptions of natural law.⁹ But for Marsilius, natural law is subsumed beneath

⁶ *MPMPP*, pp. 150–51.

⁷ *MPMPP*, p. 151.

⁸ *MPMPP*, p. 151.

⁹ For this characterization of Stoic natural law theory, see T. Burns, 'Aquinas's Two Doctrines of Natural Law', *Political Studies*, 48 (2000), 929–46 (p. 929), and Bernard Yack, *The Problems of a Political Animal* (Berkeley and Los Angeles: University of California Press), p. 141; for this characterization of Thomistic natural law theory, see Yack, pp. 141–42, and Harry Victor Jaffa, *Thomism and Aristotelianism: A Study of the Commentary by Thomas Aquinas on the Nicomachean Ethics* (Chicago: University of Chicago Press), pp. 179 and 182–83.

legislative enactments, being those positive laws which are the same across political communities everywhere.¹⁰

As Marsilius places natural law *within* the political realm, and not above it, scholars like Annabel Brett have asserted that we must understand Marsilius in this sense as ‘authentically Aristotelian’.¹¹ Indeed, Aristotle’s definition of natural right is given as a subset of political right, along with legal or conventional right. Natural right for Aristotle is *that part* of political right which ‘has the same force everywhere and does not depend on people’s thinking’, whereas legal right is defined as ‘what originally makes no difference whether it takes one form or another, but does matter when people have adopted it; for example, that the ransom for a prisoner be one mina, or that a goat be sacrificed and not two sheep’.¹² Although natural right ‘has the same force everywhere’,¹³ this cannot be interpreted to mean that Aristotle sees it as an *unchanging* standard which exists prior to and above political laws — which is indeed how the majority of scholastics interpreted this phrase — since Aristotle also tells us that natural right and legal right, in addition to being postpolitical, are ‘equally changeable’.¹⁴ Indeed, ‘everything’ is changeable, it is just that ‘some things are so by nature, and others are not’.¹⁵

There has been much work done on how Aristotle’s notion of natural right is incompatible with the Stoic/Thomistic notion, and it is not possible to address this complex issue adequately here. The point I want to bring out at this stage in my argument is that Aristotle’s treatment of natural right in the *Nicomachean Ethics* does not present it as a universal standard of right against which particular political laws are to be judged. As Yack explains:

Aristotle himself never suggests in [Book V. 7] that natural and conventional right represent two competing standards of adjudication. He provides us with no examples of cases where conventional and natural standards of justice conflict, which we would

¹⁰ See Annabel Brett, ‘Politics, Right(s) and Human Freedom in Marsilius of Padua’, in *Transformations in Early Modern and Medieval Rights Discourse*, ed. by Virpi Mäkinen and Petter Korkman (Dordrecht: Springer Publishers, 2006), pp. 106–07.

¹¹ Brett, p. 95.

¹² Aristotle, *Nicomachean Ethics*, trans. by Roger Crisp (Cambridge: Cambridge University Press, 2000), V. 7.

¹³ *Nicomachean Ethics*, V. 7.

¹⁴ *Nicomachean Ethics*, V. 7. For a discussion of Aristotle’s notion of a ‘wholly mutable natural right’, see Yack, pp. 142–49.

¹⁵ *Nicomachean Ethics*, V. 7.

expect him to do if he thought of them as higher and lower standards [...]. We find no challenge of conventional right by the standards of natural right in the *Nicomachean Ethics*, let alone advice about how we might 'raise' conventional standards toward natural standards.¹⁶

Thus, to return to Marsilius, Brett points out that Marsilius's division of 'right' into 'natural and civil' was a division of '*human* right', and she argues that Marsilius's use of human right was a gloss on Aristotle's 'political' right.¹⁷ For Marsilius, following his reading of Aristotle, 'the sphere of the human, properly speaking, just *is* the sphere of the political', and therefore in placing natural right under human right, Marsilius sees it as nothing 'other than a universal *civil* right'.¹⁸ In this way, Marsilius rejects the notion of natural law as an extra-legal standard.

Marsilius's definition of law in Discourse I, Chapter 10, reinforces this interpretation of his idea of natural law, for there he gives no indication that the validity of human laws need to be judged through the principles of natural law. Indeed, as Marsilius goes over the various definitions of 'law', natural law does not even make the list.¹⁹ Marsilius's main interest here is positive law, which he defines as 'a "discourse" or statement emerging from prudence and political "understanding", that is, it is an ordinance made by political prudence, concerning matters of justice and benefit and their opposites, and having "coercive force"'.²⁰ Of course, the fact that Marsilius insists that a 'true cognition' of 'civil justice' cannot be a law unless 'a coercive command has been given concerning [its] observance' has been noted by many scholars to be a significant departure from the natural law tradition.²¹ But here I want to draw attention to the other aspect of his definition: that law is a discourse from

¹⁶ Yack, pp. 143–44.

¹⁷ Brett, p. 106 (*italics mine*).

¹⁸ Brett, p. 106 (*italics mine*). See Gewirth, who also argues that Marsilius conflates natural law and positive law: 'Marsilius's natural law simply is positive law' (*MPMPP*, p. 151).

¹⁹ *DPa*, I. 10. 3, as noted by Gewirth (see *MPMPP*, p. 147).

²⁰ *DPa*, I. 10. 4.

²¹ *DPa*, I. 10. 5. This is especially true because Marsilius argues that 'sometimes false cognitions of the just and the beneficial become laws, when there is given a command to observe them, or they are made by way of a command' (*DPa*, I. 10. 5). He also argues that 'true knowledge' of the just and beneficial cannot be the 'measure of human civil acts, unless there is given a coercive command as to its observance' (*DPa*, I. 12. 2), another departure from the Stoic and Thomistic traditions, where natural law is the true measure of all human acts, both public and private (see Jaffa, pp. 182–83).

prudence and political understanding. Marsilius argues for the necessity of prudence in law making, but makes no mention here of a connection between the operation of prudence and the principles of natural law. Instead, we find that this prudence is most likely to be secured in law making, not by reference to natural law, but through giving the authority to make laws to the ‘whole body of the citizens’.²²

These observations give weight to Gewirth’s claim that Marsilius’s notion of natural law does not retain the status which it has in the Stoic and Thomistic traditions of a ‘higher’ norm to which practical reason, and therefore positive law, must be conformed. But I want to argue here that although Marsilius’s various treatments of law — whether natural or positive — may reject the idea of a body of universal precepts which are to be applied to particular situations through positive law, there still seems to be a body of self-evident principles operating in Marsilius’s thought which must be referred to by the practical reason in order for it to reach right conclusions concerning how to order practical affairs. What I want to do here is examine the character and operation of these principles and compare them with the operation of the principles of natural law in the thought of Aquinas. Through this examination I hope to show both the ways in which these principles operate like natural laws in Marsilius’s thought, as well as the ways in which they do not.

Up to this point, I have defined ‘natural law’ as a universal, self-evident, unchanging principle or body of principles which is an extra-legal standard upon which positive law is to be based, and against which it is to be judged. This definition now needs to be extended somewhat so that the salient features of a natural law theory are presented in such a way that the natural law elements in Marsilius’s thought can be brought into relief. Because Aquinas’s thought is often considered as a ‘paradigm’ natural law theory, I shall use his notion of natural law as a starting point for discussing some of the elements of which a natural law theory could be said to consist.

We have seen how natural law is characterized through a ‘top-down’ relationship between it and positive law. In Aquinas, this ‘top-down’ relationship reflects the broader relationship between natural law and the operation of practical reason generally. There is much dispute among scholars as to the exact dynamic of this ‘top-down’ relationship in Aquinas’s thought, namely, whether Aquinas sees a deductive relationship between the universal principles of natural law and the particular conclusions of the practical reason, or a ‘loose’

²² *DPA*, I. 12. 5.

relationship, such that the operation of practical reason merely 'falls under' the natural law, but receives no significant guidance from it.²³ An integral aspect of this dispute is how Aquinas's notion of practical reason should be divided between natural law on one side and prudence on the other, or, in other words, where natural law ends and prudence begins.

The issue is complicated by the fact that most scholars see Thomistic natural law as consisting of at least two, if not several 'tiers', commonly referred to as 'secondary precepts', which are known through a process of deduction from the primary precepts of natural law. These secondary precepts give somewhat more specific guidance than do the primary precepts, though they are still part of the natural law and are therefore, like the primary precepts, universal.

Some scholars see these secondary, or 'intermediate', precepts as separate from, but also necessary for, the functioning of prudence, which is to determine what is to be done in the here and now. For instance, John Finnis has argued that practical wisdom has 'two movements', the first one being the movement from the first precepts of natural law to the secondary precepts, what he explains as 'moral precepts (still of the natural law) whose truth is accessible only to a wisdom not shared by all', and the second one being 'the movement from evaluations of possibilities as opportunities (true goods) to practical choices by individuals, choices which could have the objectivity of reasonableness without themselves being uniquely determined or required by any general principles or precepts'.²⁴ For Finnis, the secondary precepts, or what he calls 'intermediate principles', are indispensable in guiding the reason as it makes the transition from judgements about very general human goods to judgements about the right thing in a particular situation.²⁵

Others, however, see these secondary precepts as an infringement upon, and therefore an impoverishment of, prudence, since they represent a system of

²³ For an assertion of this position, see for instance Daniel Nelson, *The Priority of Prudence* (University Park: Pennsylvania State University Press, 1992), p. 113: 'Far from guiding action (except in the sense that the possibilities for acting are limited by our created nature), natural law is a way of talking about how it is that we act at all, how it is that we are able to reason about acting, and how it is that there is broad agreement about the most general moral judgments. Natural law is part of the continuum between God's reason expressed in creation and human reason expressed in the specific ordinances of a community's legislation or in customary standards of behavior.'

²⁴ John Finnis, *Fundamentals of Ethics* (Oxford: Clarendon Press, 1983), pp. 69–70.

²⁵ Finnis, p. 70.

moral norms through which moral direction is given. In this camp are scholars like John Bowlin and Daniel Nelson. Bowlin criticizes Finnis for attempting to ‘capture’ right reason in a set of ‘general rules derived in some manner from the first precepts of natural law’.²⁶ Aquinas saw the good as ‘contingent and complex and therefore our right relation to it cannot be captured in general rules of rationality derived from our natural orientation to its most basic outline’.²⁷ Instead, Bowlin argues that it is right reason alone, or prudence, which is responsible for discerning how to act in particular situations, without the help of ‘concrete moral guidance’ which the secondary principles offer to us in the standard accounts of Thomistic natural law.²⁸ Similarly, Nelson rejects the notion that there are secondary principles of natural law which are formulated prior to the involvement of prudence. Rather, there are the first principles of natural law, which in themselves ‘are too general and abstract to guide action’, and then there are secondary principles, which represent ‘the judgments of prudence’, being as they are the determinations of experienced persons.²⁹ Thus, both Bowlin and Nelson reject the idea of ‘moral norms’ deduced from the first principles of natural law, and instead categorize all moral reasoning under these first principles as prudence.

The issue of the dividing line between natural law and prudence is important for our purposes here, because it points to the wider issue of the distinction between necessity and contingency in practical reasoning — both in Aquinas and Marsilius. Aquinas is absolutely clear that he follows Aristotle in seeing prudence as the reasoning we use in contingent, particular situations. He also follows Aristotle in distinguishing practical reasoning from speculative reasoning, arguing that since practical reason *as a whole* is concerned with practical matters, it is therefore not concerned with necessary things ‘with which the speculative reason is concerned’, but rather with the ‘singular and particular’.³⁰ On the other

²⁶ John Bowlin, *Contingency and Fortune in Aquinas's Ethics* (Cambridge: Cambridge University Press, 1999), p. 119.

²⁷ Bowlin, p. 119.

²⁸ Bowlin, p. 115.

²⁹ Nelson, p. 115.

³⁰ Thomas Aquinas, *Summa theologiae*, 4 vols (Madrid: Biblioteca de Autores Cristianos, 1962), II, 1a2ae, qu. 91, art. 4; English translations are from *Readings in Classical Political Thought*, ed. by P. J. Steinberger (Indianapolis: Hackett, 2000). Aquinas says, ‘ratio practica est circa operabilia, quae sunt singularia et contingencia; non autem circa necessaria, sicut ratio speculative. Et ideo leges humanae non possunt illam infallibilitatem habere quam habent conclusiones demonstrativae

hand, Aquinas argues that natural law, which pertains to practical reason, is characterized by universality, and a certain kind of necessity. Thus, although Aquinas maintains the Aristotelian distinction between speculative, or scientific reasoning, and practical reasoning, it is nonetheless true that universality and necessity are properties of Aristotelian scientific reasoning, not of reasoning which governs human action. Therefore, it is this relationship between Aquinas's notion of natural law and an Aristotelian science which I now want to explore briefly, for if natural law can be shown to be associated with a kind of human science, then it can be argued that Marsilius's human science — that is, his scientific theory of politics — should require us to re-examine his banishment from the list of medieval natural law theorists.

Aristotle explains in the *Posterior Analytics* that scientific knowledge is knowledge by which we understand a thing *simpliciter*.³¹ This kind of understanding can only be had of those things which 'cannot be otherwise', and we have it through demonstration, which Aristotle defines as 'scientific deduction'.³² Among the essential features of demonstration are first, it proceeds from principles to conclusions by way of the syllogism, where the principles are 'true and primitive and immediate and more familiar than and prior to and explanatory of the conclusion'.³³ Second, for demonstrative reasoning to be 'especially scientific', these principles must be necessary. As Aristotle explains: 'Since it is impossible for that of which there is understanding *simpliciter* to be otherwise, what is understandable in virtue of demonstrative understanding will be necessary. Demonstration, therefore, is deduction from what is necessary.'³⁴ Indeed, when one 'understands demonstratively', the conclusion of a syllogism belongs to the principles 'from necessity'.³⁵ In order for this to be true, however, both the major premise and the middle term must be necessary as well.³⁶

scientiarum. Nec oportet quod omnis mensura sit omni modo infallibilis et certa, sed secundum quod est possibile in genere suo.'

³¹ See Aristotle, *Posterior Analytics*, in *The Complete Works of Aristotle*, Revised Oxford Translation, ed. by Jonathan Barnes, 2 vols (Princeton: Princeton University Press, 1984), I, 71b9–19.

³² *Posterior Analytics*, 71b15–19.

³³ *Posterior Analytics*, 71b20–22; see also 71b25–29.

³⁴ *Posterior Analytics*, 72b21–24.

³⁵ *Posterior Analytics*, 75a11.

³⁶ See *Posterior Analytics*, 74b27–75a14. See also E. Serene, 'Demonstrative Science', in *Cambridge History of Later Medieval Philosophy* (Cambridge: Cambridge University Press, 1982),

The third feature, essentially related to the second, is that as the principles are necessary, they are therefore, by definition, universal.³⁷ Again, the syllogism that is ‘especially scientific’ in Aristotelian science is that which yields universal (and therefore necessary) conclusions.³⁸ As Flannery argues, this means that the syllogism *Barbara* ‘occupies a special position’ in Aristotelian science, since it yields a necessary and universal conclusion.³⁹ *Barbara* can be stated thus: ‘It is necessary that L holds of every M; it is necessary that M holds of every S; therefore it is necessary that L holds of every S.’⁴⁰

Aquinas adopts Aristotle’s characterization of science as that which pertains to the universal and the necessary. Indeed, science (*scientia*) is one of the three virtues of the speculative intellect, along with wisdom and understanding (*intellectus*).⁴¹ These virtues have as their object the truth,⁴² and, unlike the virtues of the practical intellect — prudence and art — they are concerned not with contingent things, only with necessary ones. As Aquinas explains, truth is considered in two ways: in one way, as it is known in itself, which pertains to principles *per se notum*; in another way, as it is known through other principles (*per aliud notum*), as when we demonstrate conclusions from principles.⁴³ To grasp principles *per se notum* is the function of the virtue *intellectus*, and to demonstrate conclusions is the function of *scientia*.

Yet, although he sharply distinguishes science from the practical intellect, at times he locates a scientific-like characteristic in the practical intellect by speaking about a *practical science*, which consists of universal principles pertaining to human action. It is Aquinas’s concept of prudence that explains the character of these principles, for prudence ‘not only proceeds out of universal principles, but indeed out of particular principles’.⁴⁴ These universal principles of action can be

pp. 496–517, who argues that the demonstrative syllogism must have premises which are ‘necessary’ (see p. 497).

³⁷ See *Posterior Analytics*, 77a5–9, on the necessity of at least one universal principle for demonstration.

³⁸ See Kevin Flannery, *Acts Amid Precepts: The Aristotelian Logical Structure of Thomas Aquinas’s Moral Theory* (Edinburgh: T & T Clark, 2001), p. 209.

³⁹ See Flannery, pp. 209–10.

⁴⁰ See Flannery, p. 209.

⁴¹ *Summa theologiae*, 1a2ae, qu. 57, art. 2.

⁴² *Summa theologiae*, 1a2ae, qu. 57, art. 2.

⁴³ *Summa theologiae*, 1a2ae, qu. 57, art. 2.

⁴⁴ *Summa theologiae*, 1a2ae, qu. 58, art. 5.

known in two ways. First, through the *intellectus*, that is, through a natural understanding of principles, through which one understands very basic natural law principles such as the first principle of practical reasoning 'no evil is to be done'.⁴⁵ Although here Aquinas articulates only this principle as that which is known through *intellectus*, he speaks of man as understanding *principles* through *intellectus*. Thus, perhaps in this category as well one could place the primary principles that Aquinas lays out in 1a2ae, Question 94, Article 2, which pertain to the preservation of human life, sexual union between husband and wife and the bearing and raising of children, living in human communities, acting rationally, and seeking the truth about God.

The second way in which principles can be known is through the habit of *scientia*, through which one reasons demonstratively from these most general natural law principles to a *universal* conclusion.⁴⁶ Although a conclusion, it has a similar status to the principles from which it reasoned, since it also operates in the practical reason as a universal principle. As such, it is distinguished from prudence, not only because it is universal, but also because prudence requires a right appetite in order to formulate particular dictates about what should be done, whereas man is rightly disposed to these universal principles — had either, Aquinas reminds us, through the natural intellect or through science — irrespective of his character.⁴⁷ In this way, knowledge of the natural law is *different in kind* for Aquinas than the knowledge of prudence, although he seems to locate both kinds of knowledge in the practical intellect.

Thus, Aquinas's notion of a practical science points us straight back to the issue we discussed earlier of the relationship between primary and secondary precepts of natural law, for secondary precepts are nothing other than the universal conclusions which Aquinas maintains can be understood through the

⁴⁵ See note 46, below.

⁴⁶ *Summa theologiae*, 1a2ae, qu. 58, art. 5; 'Circa principia quidem universalia agibilium, homo recte se habet per naturalem intellectum principiorum, per quem homo cognoscit quod nullum malum est agendum; vel etiam per aliquam scientiam practicam.'

⁴⁷ *Summa theologiae*, 1a2ae, qu. 58, art. 5; 'Contingit enim quandoque quod huiusmodi universale principium cognitum per intellectum vel scientiam, corrumpitur in particulari per aliquam passionem: sicut concupiscenti, quando concupiscentia vincit, videtur hoc esse bonum quod concupiscit, licet sit contra universale iudicium rationis. Et ideo, sicut homo disponitur ad recte se habendum circa principia universalia, per intellectum naturalem vel per habitum scientiae; ita ad hoc quod recte se habeat circa principia particularia agibilium, quae sunt fines, oportet quod perficiatur per aliquos habitus secundum quos fiat quodammodo homini connaturale recte iudicare de fine. Et hoc fit per virtutem moralem.'

habit of science. In his *Commentary on the Ethics*, Aquinas asserts the necessity of these conclusions. One can proceed from the principles of natural right to conclusions, and since the premises are necessary, the conclusion is necessary also.⁴⁸ This necessity means that the conclusion, like the principles from which it was reasoned, is also natural right.⁴⁹ It therefore holds 'always and everywhere', and is thus to be distinguished from positive right, or legal right. For an example of this kind of reasoning where both principles and conclusions are natural right, Aquinas asserts that out of the principle 'no one is to be harmed unjustly', there follows the conclusion 'there is to be no stealing'.⁵⁰

Of course, we must be careful about the necessity of secondary principles. In the *Summa theologiae*, for instance, there is a question mark over this necessity, in large part because it is not clear what sort of distinction Aquinas is making between the principles of the practical reason and its conclusions. As we have seen, in many places Aquinas speaks of secondary principles *as* conclusions, but in *Summa*, 1a2ae Question 94, Article 4, he sometimes argues as if the conclusions of the practical reason pertain to something like prudence. Thus, he argues that although the practical reason differs from the speculative reasoning in that it is concerned with contingents, it is characterized, like the speculative reasoning, by necessity 'in [its] general principles (*etsi in communibus sit aliqua necessitas*)'. In these general principles, 'truth or rectitude is the same for all, and is equally known by all.'⁵¹ However, in the proper conclusions of practical reason, 'neither is the truth or rectitude the same for all, nor, where it is the same, is

⁴⁸ Thomas Aquinas, *Sententia Libri Ethicorum*, in *Opera Omnia iussu Leonis XIII P. M. edita cura et studio Fratrum Praedicatorum* (Rome, 1882), vol. XXII, commentary on 1134b18–1134b24. In this passage Aquinas is considering the relationship between natural and positive law, or how 'iustum legale sive positivum oritur semper a naturali'. Positive law could come from natural law in the two ways: first, as conclusions come out of principles. However, Aquinas argues, this does not really pertain to the relationship between positive law and natural law, because 'praemissis enim existentibus, necesse est conclusionem esse; sed, cum iustum naturale sit semper et ubique, ut dictum est, hoc non competit iusto legali vel positivo'.

⁴⁹ Aquinas, *Sententia Libri Ethicorum*, commentary on 1134b18–1134b24: 'et ideo necesse est quod quicquid ex iusto naturali sequitur quasi conclusio sit iustum naturale.'

⁵⁰ Aquinas, *Sententia Libri Ethicorum*, commentary on 1134b18–1134b24: 'sicut ex hoc quod est nulli esse iniuste nocendum, sequitur non esse furandum, quod item ad ius naturale pertinet.'

⁵¹ *Summa theologiae*, 1a2ae, qu. 94, art. 4: 'Sic igitur patet quod, quantum ad communia principia rationis sive speculativae sive practicae, est eadem veritas seu rectitude apud omnes, et aequaliter nota.'

it equally known by all.’⁵² Yet, these ‘proper conclusions’ do not seem to be prudential judgements, because the example that Aquinas gives of them is a universal proposition. He says that from the principle ‘it is right and true for all to act according to reason’ there follows ‘a proper conclusion that goods entrusted to another should be restored to their owner’.⁵³ With this conclusion we are still at the level of practical science, because a particular proposition specifying which goods should be returned has not yet entered the syllogism.⁵⁴ Yet, despite the universal nature of this proper conclusion, Aquinas identifies it as a principle that would hold only ‘for the majority of cases’, since ‘it may happen that in a particular case it would be injurious, and therefore unreasonable, to restore goods held in trust, for instance, if they are claimed for the purpose of fighting against one’s country’.⁵⁵

I do not have room to give an adequate discussion of what kind of necessity characterizes the different principles of natural law, nor is this necessary for my purposes here. My intention is to bring out the association between Aquinas’s notion of natural law and an Aristotelian science, by articulating Aquinas’s concept of practical science, which is reasoning about human action on a universal, and therefore in some way necessary, level. It is clear that Aquinas does recognize a kind of moral reasoning that is separate from, although vital for, prudence, and that this reasoning is associated with a movement from the primary principles of natural law to more concrete principles.

However, it is also clear that Aquinas does not spell out this movement from primary to secondary principles in any detail. To be sure, he has specified the primary precepts, starting with the first principle of practical reason, and then including the basic precepts as I have outlined above pertaining to life, offspring, human association, rationality, and God. But Aquinas gives very few specifications of what principles might follow from these primary precepts. Thus,

⁵² *Summa theologiae*, 1a2ae, qu. 94, art. 4.

⁵³ *Summa theologiae*, 1a2ae, qu. 94, art. 4; ‘Apud omnes enim hoc rectum est et verum, ut secundum rationem agatur. Ex hoc autem principio sequitur quasi conclusio propria, quod deposita sint reddenda.’

⁵⁴ For the necessity of the presence of a particular proposition to form a bridge between the realm of moral principles and the realm of prudence, see Daniel Westberg, *Right Practical Reason: Aristotle, Action and Prudence in Aquinas* (Oxford: Clarendon Press, 1994), pp. 150–51.

⁵⁵ *Summa theologiae*, 1a2ae, qu. 94, art. 4; ‘Et hoc quidem ut in pluribus verum est: sed potest in aliquo casu contingere quod sit damnosum, et per consequens irrationabile, si deposita reddantur: puta si aliquis petat ad impugnandam patriam.’

although Aquinas certainly *posits* the concept of a practical science, where the practical intellect moves among a body of necessary principles to necessary conclusions, *he is very thin on the actual content of this science*. This has led Finnis to complain that Aquinas left ‘a logical space’ between the first principles ‘which formulate the contours of a morally good life’, and conclusions that follow from them, such as the moral norms that we find in the Ten Commandments.⁵⁶

Undoubtedly this ‘logical space’ is important, and it has led scholars like Bowlin to assert that it is evident that Aquinas does not engage in ‘natural law reasoning’ at all.⁵⁷ But for my purposes here, which are to bring into relief the natural law elements in Marsilius’s thought by comparing him to Aquinas, it is enough that these scholars identify natural law reasoning with a practical science which moves from necessary principles to necessary conclusions.⁵⁸ For that is exactly what Marsilius does in the *Defensor pacis*.

The *Defensor pacis* consists of a *scientific* treatment of the *contingent* topic of human government. However, Marsilius never mentions the problematic aspect of applying a scientific method to a contingent matter, for instance, by noting that human action is not a necessary affair and therefore does not fall under the speculative reason, which has the habit of *scientia*. Instead, he proposes to ‘demonstrate’ his views on good government ‘by sure methods (*viis certis*) discovered by the human intellect’.⁵⁹ His method is comprised of the following elements: first, his demonstrations proceed from ‘propositions self-evident to every mind’.⁶⁰ The evidence of each principle is found either in the principle itself, when is known *per se*, or because it is made evident itself through a prior demonstration.⁶¹ Second, he infers conclusions from these principles, and these

⁵⁶ Finnis, p. 69.

⁵⁷ See Bowlin, p. 115.

⁵⁸ See for instance, Nelson, p. 87: ‘the contrast I draw is between an ethics of virtue centered on prudence and an ethics of natural law that deduces moral imperatives from an array of naturally known first principles.’

⁵⁹ *DPa*, I. 1. 8; ‘demonstrabo intenta viis certis humano ingenio adinventis.’

⁶⁰ *DPa*, I. 1. 8; ‘demonstrabo intenta viis certis humano ingenio adinventis, constantibus ex propositionibus per-se-notis cuilibet menti non corruptae natura, consuetudine, vel affectione perversa.’

⁶¹ See for instance the proof that Marsilius gives in *DPa*, I. 12. 5, for his assertion that the ‘human authority to make laws belongs only to the whole body of the citizens or to the weightier part thereof’. There, the major premise of the proof, although it is said to be ‘very close to self-evident’, can be considered as derived from a previous principle set out in I. 5.

conclusions have an evident certainty and necessity, due to the certainty and necessity of their principles.⁶² He sets forth these necessary conclusions in the third discourse of the *Defensor pacis*, where he asserts their universality, arguing that 'if they are diligently studied and acted upon', the 'pestilence' which is caused in political communities by the papacy 'will without difficulty be excluded from states, and will henceforth be denied entry *to these and all other civil communities*'.⁶³ Thus, Marsilius presents us with a political science with at least three tiers of principles: those that are known *per se*, those that are proved through demonstrations and then operate as principles in further demonstrations, and those that are necessary conclusions in these further demonstrations.

Chapters 4 and 5 of Discourse I of the *Defensor pacis* contain the starting point for Marsilius's demonstrations, for it is here that he sets forth what he calls the 'principle of all things to be demonstrated in this book'.⁶⁴ This first principle, which is known *per se* — that is, it is 'naturally held, believed, and freely granted by all' — states 'all men not deformed or otherwise impeded naturally desire a sufficient life, and avoid and flee what is harmful thereto'.⁶⁵ Closely following this principle is a second principle, that 'the state is a community established for the sake of the living and living well of the men in it'.⁶⁶ Marsilius describes this principle as self-evident;⁶⁷ however, he also provides some *inductive* reasoning to move from his first principle, that 'all men not deformed, naturally desire the sufficient life' to the principle that 'the state is necessary for the sufficient life'. This inductive reasoning goes as follows:

⁶² In his introduction to Discourse III, Marsilius informs us of the culmination of his method (*DPa*, III. 1. 1; 'Quae nil aliud erit quam ex antepositis per-se-notis vel demonstratis necessaria et explicita illatio conclusionum quarundam').

⁶³ *DPa*, III. 1. 1 (speaking of the aforesaid necessary conclusions); 'quibus, adhibita diligenti attentione meditationis et opere, supradicta pestis eiusque sophistica causa non difficulter excludentur a regnis, ipsisque deinceps ad ea reliquasque civitates praeccludetur ingressus.'

⁶⁴ *DPa*, I. 12. 2.

⁶⁵ *DPa*, I. 4. 2; 'Hoc ergo statuamus tamquam demonstrandorum omnium principium naturaliter habitum, creditum, et ab omnibus sponte concessum: omnes scilicet homines, non orbatos aut aliter impeditos, naturaliter sufficientem vitam appetere, hinc quoque nociva refugere et declinare.'

⁶⁶ See *DPa*, I. 4. 3.

⁶⁷ *DPa*, I. 5. 2.

Man is born composed of contrary elements, because of whose contrary actions and passions some of his substance is continually being destroyed; moreover, he is born 'bare and unprotected' from excess of the surrounding air and other elements, capable of suffering and of destruction [...]. As a consequence, he needed arts of diverse genera and species to avoid the afore-mentioned harms. But since these arts can be exercised only by a large number of men, and can be had only through their association with one another, men had to assemble together in order to attain what was beneficial through these arts and avoid what was harmful.⁶⁸

This kind of inductive reasoning is just as pervasive throughout the *Defensor pacis* as is Marsilius's demonstrative reasoning. No doubt this is an important fact about the way Marsilius derives the 'first principles' of his science, but I do not have room to discuss its implications here. What I can note for my purposes here is that Marsilius seems to lump induction with demonstration when it comes to 'proving' the evidence of a proposition. For instance, in Chapter 4 Marsilius continues on with inductive-like reasoning from the principle that 'the state is necessary for the sufficient life', giving reasons why various parts of the state are necessary.⁶⁹ He then proclaims in Chapter 5 that the proposition indicating the necessity of the different parts of the state 'has been previously *demonstrated* [i.e., in Chapter 4] from what is self-evident, namely, that the state is community established for the sake of the living and the living well of the men in it'.⁷⁰ Thus, inductive reasoning seems to hold a kind of necessity for Marsilius that is similar to the necessity he finds in demonstrative reasoning.

Once Marsilius has 'demonstrated' the necessity of the different parts of the state, he then uses this proposition to 'demonstrate' (again through inductive reasoning) the specific necessity of the ruling part of the state, which has as its function to regulate civil human acts.⁷¹ Thus, there are three basic principles that Marsilius considered himself to have demonstrated in Chapters 4 and 5, all

⁶⁸ *DPA*, I. 4. 3; 'quod quia homo nascitur compositus ex contrariis elementis, propter quorum contrarias actiones et passiones quasi continue corrumpitur aliquid ex sua substantia; rursusque quoniam nudus nascitur et inermis ab excessu continentis aeris et aliorum elementorum, passibilis et corruptibilis, quemadmodum dictum est in scientia naturarum; indiguit artibus diversorum generum et specierum ad declinandum nocumenta praedicta. Quae quoniam exerceri non possunt nisi a multa hominum pluralitate, nec haberi nisi per ipsorum invicem communicationem, oportuit homines simul congregari ad commodum ex hiis assequendum et incommodum fugiendum.'

⁶⁹ See *DPA*, I. 4. 4–5.

⁷⁰ *DPA*, I. 5. 2.

⁷¹ *DPA*, I. 5. 7.

following from what we could call Marsilius's first principle of political science. These principles are 1) that man cannot have sufficiency of life without the state; 2) that the state is necessarily composed of different parts to ensure man's sufficiency of life; and 3) that there is a ruling part needed in a state to regulate human acts according to a certain standard, in order for the state to survive. Marsilius calls these principles 'immediate truths', and uses them throughout the rest of his demonstrations as the basic principles from which all other principles of political science follow.

For instance, when Marsilius sets out his proof for his assertion that the legislator in a state should be 'the people, or the whole body of citizens, or the weightier part thereof', he demonstrates as follows: The major premise is: 'The absolutely primary human authority to make or establish human laws belongs only to those men from whom alone the best laws can emerge.'⁷² The minor premise is: 'but these are the whole body of the citizens, or the weightier part thereof, which represents the whole body.' The conclusion then follows: 'the authority to make or establish laws, therefore, belongs only to the whole body of the citizens or to the weightier part thereof.'⁷³ Marsilius then explains the necessity of this demonstration by showing both premises to be evident. The first proposition, he states, 'is very close to self-evident, although its force and its ultimate certainty can be grasped from Chapter 5 of this discourse'.⁷⁴ He then sets out to prove the second proposition, through a process of induction which I will not recount here. The necessary conclusion then follows, that the authority to make laws only belongs to the whole body of citizens.

I have recounted the 'immediate truths' of Marsilius's method, what we could call his primary principles of political science, and their role in the demonstrations in the *Defensor pacis* in order to show how Marsilius moves from these primary principles to what we could call secondary principles, or necessary conclusions. As we have seen, Aquinas neglected to give a detailed account of the secondary principles that follow from the primary principles of natural law, although he asserted that such a movement does take place. Marsilius, on the other hand, is very explicit and methodical in giving secondary principles, such as 'the establishment of the law is necessary in the polity', and, as we have seen, 'the authority to make or establish laws belongs only to the whole body of the citizens', and 'the election of the ruler is always to be made by the authority of

⁷² *DPa*, I. 12. 5.

⁷³ *DPa*, I. 12. 5.

⁷⁴ *DPa*, I. 12. 5.

the legislator, who is the whole body of citizens'. And, as we have seen, Marsilius does not stop his science here, but ends the *Defensor pacis* with a list of forty-two conclusions that follow necessarily from these and other secondary principles. Thus, where Aquinas left a 'logical space' between the primary precepts of natural law such as preserving life, bearing and raising children, living sociably, acting rationally, and seeking God, and concrete moral norms that give more direction to action, Marsilius seems to have filled completely the analogous space in his theory.

In conclusion, if Marsilius reasons from universal principles to universal conclusions in the subject matter of human affairs, does this mean that he lacks a theory of natural law in name only? Of course not. However, this question does require us to think about what more is involved in natural law than a set of universal necessary principles concerning human action.

It might be argued that Aquinas's theory of natural law is *practical* because it contains commands about attaining certain ends, while Marsilius's theory of scientific principles is *speculative* because it is descriptive about the kind of creatures human beings are and therefore what sort of political institutions they need in order to survive. However, this difference between Aquinas's principles and Marsilius's principles is not watertight, because Marsilius does use deontological language in the *Defensor pacis*, such as *debere*, when he speaks of certain institutions that must be established in any polity.⁷⁵ In any case, scholars today working on theories of natural law cannot agree on where to draw the boundaries in a moral theory between speculative reasoning and practical reasoning, so offering this distinction as a way to categorize natural law from principles of a human science seems a premature solution at best.⁷⁶ In the end, although Marsilius may not have a theory of natural law himself, it is clear that he has an important story to tell to the natural law tradition.

⁷⁵ See for instance, *DPA*, III. 2. 2, 11, 23, 34, 35, 41.

⁷⁶ See for instance, Anthony J. Lisska, *Aquinas's Theory of Natural Law: An Analytic Reconstruction* (Oxford: Clarendon Press, 1996), pp. 156–57.

THE NATURE OF GRACE AND ITS RELATION TO POLITICAL PHILOSOPHY IN MARSILIUS OF PADUA'S *DEFENSOR PACIS*

Michael Sweeney

Grace is so important to the political thought of *Defensor pacis* that one would expect a plethora of studies dedicated to the subject. Marsilius says that he is writing to combat 'a certain perverted opinion [...] which came to be adopted as an aftermath of the miraculous effect produced by the supreme cause; [...] an effect beyond the power of the lower nature and the usual action of causes in things.'¹

A Marsilian Doctrine of Grace?

A misunderstanding of the law of grace, that is, the confusion of the supernatural with law in this world, has caused great misery within Christendom, and Marsilius expresses the hope that *Defensor pacis*, his correction of this error, is a work inspired by grace.² Nevertheless, the obstacles

¹ All English translations of *Defensor pacis*, unless otherwise noted, are from Marsilius of Padua, *Defensor pacis*, trans. by Alan Gewirth (New York: Columbia University Press, 1956). Hereafter, citations of this text appear as *DPa* along with page number. All quotations of *Defensor pacis* are from Marsilius von Padua, *Defensor Pacis*, *Fontes Iuris Germanici Antiqui*, ed. by Richard Scholz, 2 vols (Hannover: Hahnsche Buchhandlung 1932/33). Hereafter, citations of this text appear as *DPb* along with discourse, chapter, and section number. *DPa*, p. 5; 'Est enim hec et fuit opinio perversa [...] ex effectu mirabilis [...] a suprema causa producta, preter inferioris nature possibilitatem et causarum solitam accionem in rebus': *DPb*, 1. 1. 3.

² 'Premissis itaque Christi, sanctorum atque philosophorum monitis attendens et obsequens Anthenorides ego quidam ex intelligencie rerum harum, si qua mihi gracia credita est, spiritu quoquo confidencie ministrato desursum, a quo, teste Iacobo, sue canonice primo (capitulo):

to discerning Marsilius's doctrine of grace are also obvious, and they explain the hesitancy of scholars to address the question.³ The *Defensor pacis* contains no explicit treatise on grace, and when the term *grace* does appear, it is always without qualifying adjectives such as sanctifying, gratuitous, operating, co-operating, prevenient, subsequent, and so on, that one would expect in a medieval discussion of grace.⁴ On the other hand, Marsilius does discuss grace throughout the *Defensor pacis*. Apart from quotations, he uses the term some twenty-four times,⁵ and he develops the notion of grace in significant depth and with considerable originality.⁶ By contrast, he simply assumes the doctrine of the Trinity and speaks of it, when he must, in the most abbreviated language possible.⁷ While there is not enough in the *Defensor pacis* to identify a Marsilian doctrine on the Trinity, there is sufficient material to attempt a Marsilian doctrine on grace.

Omne datum optimum et donum perfectum, desursum descendens est a patre luminum: DPb, I. 1. 6.

³ Stephen Torracco's *Priests as Physicians of Souls in Marsilius of Padua's Defensor pacis* (San Francisco: Mellen University Press, 1992) has one of the most extensive treatments of grace in the *Defensor pacis*. See pp. 90–97, 206, and 329–30. See also Alan Gewirth, *Marsilius of Padua and Medieval Political Philosophy* (New York: Columbia University Press, 1951), pp. 56, 152–54 (hereafter, citations of this text appear as *MPMPP*); Marsile de Padoue, *Le défenseur de la paix*, trans. by Jeannine Quillet (Paris: Vrin, 1968), pp. 79, nn 5–6, and p. 403, n. 34; Jeannine Quillet, *La philosophie politique de Marsile de Padoue* (Paris: Vrin, 1970), p. 140.

⁴ For the extent of Marsilius's formal study of theology, see Georges de Lagarde, *La naissance de l'esprit laïque au déclin du moyen âge*, rev. edn (Leuven and Paris: Editions E. Nauwelaerts and Beatrice-Nauwelaerts, 1956–70), III: *Le Defensor pacis* (1970), pp. 71–78 (hereafter, citations of this text appear as *LNEL*). Lagarde argues that Marsilius did not have formal training as a theologian and that this reflects a rejection of the traditional medieval theological method in favour of a direct return to the Scriptures and to their literal interpretation.

⁵ Page numbers for instances of the noun *gratia* in *Defensor pacis* refer first to the Latin text and then to the English: I. 1. 6 (p. 7/6), I. 6. 1 (p. 29/21), I. 6. 2 (p. 29/21), I. 6. 2 (p. 30/22), I. 6. 4 (p. 31/23), *ibid.* I. 6. 5 (p. 31/23), I. 16. 20 (p. 108/77), I. 19. 4 (p. 129/92), II. 1. 1 (p. 138/98), II. 2. 5 (p. 147/105), II. 6. 2 (p. 199/141), II. 6. 4 (p. 201/142), *ibid.* II. 6. 6 (p. 202/143), II. 9. 10 (p. 241/170), II. 14. 10 (p. 310/222), II. 14. 23 (p. 323/233), II. 22. 14 (p. 434/309), II. 24. 17 (p. 465/330), II. 24. 17 (p. 466/330), II. 26. 4 (p. 490/346), II. 28. 22 (p. 558/393), II. 29. 11 (p. 585/412). Relative pronouns referring to *gratia*: I. 6. 4 (p. 34/23), II. 6. 2 (p. 199/41). The adjective *gratiosa*: I. 6. 4 (p. 31/22).

⁶ Marsilius does not appear in standard historical studies of grace.

⁷ For Marsilius's treatment of the Trinity, see DPb, I. 6. 2, I. 19. 4, II. 24. 17, II. 30. 1.

Three Meanings of Grace

1. Divine Favour: *Plenitudo Potestatis*

Despite the absence of adjectives that would distinguish among types and actions of grace, three basic meanings of grace are discernible in *Defensor pacis*. The first is the most general of the definitions: grace refers to God's free bestowal of gifts, which show his continued providence and which enable those who receive such gifts to do great things.⁸ One might summarize this use of the term *grace* as God's *plenitudo potestatis*. Properly speaking, *plenitudo potestatis* belongs only to God, for it is 'the unlimited power to perform every possible act and to make anything at will'.⁹ Grace in this sense is the power and freedom of God to give gifts and to provide for his creation. Since those who receive gifts are favoured by the benefactor, grace in this sense can also mean to receive God's favour.¹⁰ God has the power and freedom to favour whomever he chooses.¹¹ Such a notion of grace does

⁸ Marsilius describes grace as any gift from God, whether natural or supernatural, and he alludes to the gifts of the Holy Spirit in particular. Marsilius prays for grace as God's providence in the world: 'Eos tamen misericors Deus per gratiam revocare dignetur' (*DPb*, II. 1. 1). Christian almsgiving should be 'grace'; i.e., it should imitate the freedom that marks divine gifts: 'Sic etiam dicebat apostolus 2 ad Corinthos 8o et 9o pro pauperibus petens ab ipsis: *Non quasi imperans dico*; et infra: *In hoc consilium do*, talem collectam appellans *gratiam* propter quod etiam significans eam spontaneam' (*DPb*, II. 14. 10). The following passage stresses that grace is an empowering gift of God and an act of providence: 'Verum eodem testante propheta, super hanc *statuam casurus est lapis sine manibus abscissus de monte*, id est rex quem de hominum universitate per suam gratiam electum suscitabit Deus, illi scilicet conferendo potestatem, et cuius regnum alteri non tradetur; hic inquam rex magis virtute sive gracia trinitatis, quam opere seu potestate manuum hominum huius terribilis et orribilis ac monstruose statue primum conteret atque *comminuet* testeam partem' (*DPb*, II. XXIV. 17). See also note 1, above.

⁹ *DPA*, p. 314; '[C]uiuslibet actus possibilis et rem quamlibet voluntarie factiva est': *DPb*, II. 23. 3.

¹⁰ In a manner analogous to divine grace, Marsilius identifies the favour of the monarch with grace: 'Propter quod sancti episcopi, veri pastores, propter gregis salutem, augmentum, conservacionem et sustentacionem ab imperatoribus fidelibus aliisque principibus, devotis et sibi propiciis, gracias et favores, concessionem seu privilegia impetrabant aut oblatas suscipiebant, non quidem, ut preessent, set ut prodesse possent et fidelem protegere populum atque fovere' (*DPb*, II. 29. 11); 'Quinimo dicitur, expediens fortasse magis ipsos ignorare morem illius, ne ad illius illicitum placitum propter eius gratiam aut favorem sibi querendum, sed verum et comune conferens consulant' (*DPb*, I. XVI. 20).

¹¹ Roman rulers are described as seeking God's favour or grace: 'Eodemque aut consimili quasi modo, propter sue intronizacionis solemnitatem et signum et ampliorem Dei gratiam

little to distinguish Marsilius's own doctrine, since this definition is common in the medieval period and beyond. It would be more significant if Marsilius had limited his discussion of grace to divine favour, but he goes on to describe grace as merit.

2. The Law of Grace: *Meritum*

Far more important is Marsilius's use and understanding of the 'law of grace'. This second meaning of grace is the culmination of the first. In Discourse 1, Chapter 6, Marsilius presents a synopsis of salvation history in which the bestowal of God's gifts and favour to human beings reaches its peak in this world with Christ's gracious gift of merit. The story begins with the creation of Adam and Eve in grace. Human beings were created so that they might participate 'in eternal happiness after the life of the present world'.¹² They were ordered to this future state by grace.¹³ Adam's sin caused a loss of grace: through original sin human beings merit punishment rather than eternal happiness in the next life.¹⁴ To remedy this situation, 'like an expert physician, he [God] proceeded in a very orderly manner from the easier to the more difficult steps.'¹⁵ The first step was to prescribe ritual sacrifice, to which he later added circumcision. Eventually God gave the law to Israel through Moses, but this did not suffice because, while the Law of Moses removed the guilt of original and actual sin, and although it removed the deservedness of temporal and eternal sensory punishment in the next world, it did not cause those observing the law to merit eternal happiness in the next world.¹⁶ It is important to note that Marsilius does not say that it was

obtinendam, Romanorum quidam imperatores diadema regum imponi sibi fecerunt per Romanos pontifices' (*DPb*, II. 26. 4).

¹² *DPa*, p. 21; 'Ut capax et particeps esset felicitatis eterne post vitam presentis seculi': *DPb*, I. 6. 1.

¹³ 'Fuit eciam creatus in statu innocencie seu iusticie originalis et eciam gracie, ut probabiliter dicunt sanctorum aliqui et scripture sacre quidam doctores precipui': *DPb*, I. 6. 1.

¹⁴ 'Verum quia suam corruptit innocenciam seu originalem iusticiam et graciā in esu prohibiti sibi ligni, divinum in hoc transgrediendo mandatum, repente lapsus est in culpam atque miseriam sive penam, penam inquam, privacionis felicitatis eterne, ad quam Dei gloriosi beneficio cum sua posteritate qualibet finaliter fuerat ordinatus': *DPb*, I. 6. 2.

¹⁵ *DPa*, p. 22; 'Processitque in hiis ordinate valde a facilioribus ad difficiliora, velut peritus medicus': *DPb*, I. 6. 3.

¹⁶ 'Horum siquidem omnium priorum preceptorum atque Mosaice legis observacionibus utilitas erat purgacio quedam peccati sive culpe tam originalis quam actualis seu sponte commisse,

impossible to live fully according to the Mosaic law because of original sin. The problem with the Mosaic law was not the ability of human beings to fulfil its commands but the inability of the law to cause one who observed it to merit eternal happiness in the future world. The Mosaic law removed demerit without causing merit.

To remedy this lack, God sent his son, Jesus Christ, to give the evangelical law, which, Marsilius says, can also be called the 'law of grace', and the following is the central text in his doctrine of grace:

Hence, most recently of all, through his son Jesus Christ, true God and true man in unity of person, he handed down the evangelical law, containing commands and counsels of what must be believed, done, and avoided. By observance of these, not only are men preserved from sensory punishment, as they had been by observance of the prior commands, but also through God's gracious ordainment they merit, by a certain congruity, eternal happiness. And for this reason the evangelical law is called the law of grace, both because through the passion and death of Christ the human race was redeemed from its guilt and from the penalty of losing eternal beatitude which it had incurred as a result of the fall or sin of its first parents; and also because, by observing this law and receiving the sacraments established with it and in it, we are given divine grace, after it is given it is strengthened in us, and when we lose it, it is restored to us. Through this grace, by the ordainment of God and the passion of Christ, our works come by a certain congruity (as we have said) to merit eternal happiness.¹⁷

The law of grace is able not only to destroy the deservedness of punishment in the next world but also to cause one to merit the reward of eternal happiness. The Mosaic law could only do the former. It is called 'the law of grace' because it causes grace to be, and grace is the meriting of eternal happiness in the next world. The law of grace teaches what must be done to merit eternal happiness,

evasio quoque seu preservacio quedam ab eterna et temporali pena alterius seculi, quamvis ex horum observacione non mererentur homines felicitatem eternam: *DPb*, I. 6. 3.

¹⁷ *DPa*, p. 22–23; 'Omnium novissime humano generi per filium eius Iesum Christum, verum Deum et verum hominem in suppositi unitate, tradidit legem evangelicam, precepta continentem credendorum, agendorum et fugiendorum atque consilia eorum. Quorum observacione non solum a pena preservantur homines, ut per priorum observanciam, verum ex ipsius graciosia ordinacione merentur ex talibus, congruitate quadam felicitatem eternam. Et propterea lex gracie vocata est, tum quia per Christi passionem et mortem redemptum est humanum genus a culpa et pena dampni eterne beatitudinis, quam subiverat ex lapsu seu peccato primorum parentum; tum quia per illius observacionem et sacramentorum cum ipsa et in ipsa institutorum recepcionem nobis confertur gracia divina, collat robaratur et amissa recuperatur, per quam ex Dei ordinacione, cum merito passionis Christi, congruitate quadam, ut diximus, opera nostra fiunt meritoria felicitatis eterne': *DPb*, I. 6. 4.

and it is the power or *plenitudo potestatis* of Christ to cause human actions to merit an eternal reward. Without Christ's grace, without his causing of merit, our works would not deserve such a reward. The law of grace is thus twofold, including both a doctrine of what merits eternal life and the meriting of eternal life: the former comes from Christ's ministry of teaching, and the latter comes from his Passion, that is, from his death and resurrection. The Mosaic law is capable of destroying sin, but it is not capable of the creative act of causing one to merit eternal happiness. In the evangelic law, grace as merit is that which causes a present or past work (obedience to the law as doctrine) to have a positive relation to the future reward of eternal happiness.¹⁸ Without grace, no such causal relation exists: grace causes the human action to have an entitlement in the future world. Grace makes an eternal reward to be due: it is the free gift of a right (*jus*) to be rewarded with eternal happiness. Such grace or power belongs only to God.

The merit that the law of grace causes is ordered to the future world.¹⁹ This means that the rewards coming from observance of the law of grace exist only in the future world. By means of grace, the just claim or right to a reward can exist in the present, but the reward comes into existence only when this world ceases to exist. The law of grace makes merit, not what is merited, to exist now. Instead of receiving rewards in this world, those who follow the law of grace are typically afflicted with worldly punishments so that they can merit even more reward in the next life. Grace as merit is a new relationship between present and future whereby the present (work) has a future effect (eternal happiness) that it could not otherwise have: there is no effect in the present other than the gracious (undeserved) existence of deserving a future reward.

That Christ's Passion is the cause of merit or grace is unambiguous in *Defensor pacis*.²⁰ The degree to which Marsilius explains the relationship between Christ's Passion and the law of grace — *how* Christ's Passion causes merit — is

¹⁸ The law of grace can work retroactively to reward with eternal happiness those who, before Christ, had observed the Mosaic law. See *DPa*, I. 6. 5.

¹⁹ 'In celesti namque regno se premia vel supplicia daturum promittebat secundum merita vel demerita operantium, numquam tamen talia promisit in hoc seculo se facturum, sed magis econtrario huius seculi principantibus agit; quoniam ut plurimum iustos et bonorum operadores affligit in hoc seculo vel affligi sinit, et sic ad sui regni premium perducit': *DPb*, II. 4. 6f

²⁰ See *DPb*, I. 6. 3.

found in his discussion of Redemption.²¹ When someone is saved from death, and, consequently, the saviour becomes lord over the saved, redemption occurs. Lordship over the person saved and ownership over his temporal goods are both products of Redemption, and there is little difference between them for Marsilius, except that lordship is possessing a person and ownership is possessing a thing.²² Since the redeemed belong to Christ, He can reward them as he wishes. Marsilius's emphasis in the discussion of Redemption, however, is that Christ has not redeemed us from death in this world, and He will not reward us in this world. In this sense, then, His lordship is not in this world, and Christ will not exercise the power of His lordship over the redeemed until this world ends. What exists now through Redemption is merit, which is a relationship to a future act of reward that is made possible because Christ is Lord. Redemption changes the status of human beings now only by giving them a relationship to a world that does not yet exist. Since Christ now has the right over our persons (from his Passion), He can give us now the right (the law of grace) to his future kingdom.²³ Redemption explains not only how Christ's Passion causes the grace of merit to be, it also elucidates why the law of Christ is not, strictly speaking, yet a law.²⁴ The law of grace is power as well as doctrine in the sense that Christ

²¹ 'Secundum leges humanas qui aliquem redimit a morte, illius dominus efficitur ac suorum temporalium, Christus autem omnes homines a morte redimit; dico ad primam propositionem, quod non est universaliter vera, eciam secundum leges civiles, nisi apponatur volens. Esto namque iure permissum omni redemptori alterius fieri dominum eius, qui a morte redimitur et suorum temporalium; dico quod redimens aliquem a morte non necessario fit eius dominus, verbi gracia si non voluerit au renunciaverit. Propter quod eciam esto Christum omnes homines sic a morte redemisse, ut dicunt humane leges, et per consequens omnium posse dominum effici; dico tamen, quod Christus perfectus existens dominus non fuit temporalis, maxime humano seu eciam acquisito dominio, eo quod omni tali domino Christus renunciavit, tam in personis quam in rebus, ut ex 40 huius et eciam ex immediate precedente capitulo satis apparet. Vel dicendum, quod Christus pro eo statu omnium dominus efficitur, pro quo nos a morte redemit. Hoc autem est pro statu alterius seculi et non presentis; non enim redemit nos a morte huius seculi': *DPb*, II. 14. 23.

²² See *DPb*, II. 14. 5.

²³ The redeemer has the right (*jus*) to become lord over the one redeemed by death when he freely grants the grace (*gratia*) of life: see *DPb*, II. 14. 23, and note 21, above. Thus, there is no contradiction in the act of Redemption between justice and grace.

²⁴ 'Unde attendendum quod evangelica lex potest dupliciter comparari ad homines, super quos est lata per Christum: uno quidem modo ad ipsos in statu et pro statu vite presentis; et ut sic rationem habet magis doctrine speculative aut operative vel utriusque, quantum ad diversas sui partes, quam legis dicte secundum propriam et ultimam significacionem,

has the legal right to reward observers of his doctrine with eternal happiness: human beings are under the power of Christ because they belong to him by right. Nevertheless, the evangelic law is a doctrine rather than a law in this world because there is no reward and punishment for the law of grace in this world: human beings are under the lordship of Christ, but he does not use that lordship in this world to compel conformity to his teaching. Law requires both a doctrine and compulsion.²⁵ Doctrine becomes law when it is accompanied by a power or force that ensures enforcement. The law of grace will become law only when Christ exercises his lordship to reward and punish at the end of time.

The law of grace as merit dominates Marsilius's account of sacramental grace. According to the law of grace, sacraments do three things: remove sin, cause grace, and ordain ministers.²⁶ The ordaining of ministers in the sacrament of Holy Orders will be discussed below (third meaning of grace). Removal of original sin refers to baptism, and removal of actual sin refers to penance.²⁷ The

quamvis lex possit dici secundum alias legis significaciones, ut secundam et terciam, de quibus diximus 100 prime. Et causa eius quod diximus est, quoniam lex secundum ultimam et proprie dictam significacionem dicitur de regula coactiva, id est secundum quam transgressor arcetur per potenciam coactivam, traditam secundum ipsam iudicare debenti. Nunc autem per evangelicam doctrinam seu legis latorem ipsius nemo cogi precipitur in hoc seculo ad eorum observacionem, que in ipsa precipiuntur per homines in hoc seculo fieri vel omitti': *DPb*, II. 9. 3.

²⁵ 'Et sic accepta lex dupliciter considerari potest: uno modo secundum se, ut per ipsam solum ostenditur quid iustum aut iniustum, conferens aut nocivum, et in quantum huiusmodi iuris sciencia vel doctrina dicitur. Alio modo considerari potest, secundum quod de ipsius observacione datur preceptum coactivum per penam aut premium in presenti seculo distribuenda, sive secundum quod per modum talis precepti traditur; et hoc modo considerata propriissime lex vocatur est': *DPb*, I. 10. 4.

²⁶ 'In qua eciam et secundum quam sacramenta culpe originalis et actualis mundativa, divine gracie factiva et conservativa, illiusque amisse reformativa, huiusque legis ministrorum institutiva, signavit et statuit': *DPb*, I. 9. 4.

²⁷ Baptism and penance restore grace, but they also remove the guilt of sin that merits an eternal punishment, as is evident in the following passage about the sacrament of penance: 'Primum tamen oportet attendere, quod in anima peccantis mortaliter generatur culpa, et corrumpitur divina gracia sibi collata prius. Qua siquidem culpa peccator obligatur debito dampnacionis eterne pro statu futuri seculi [...]. Et econtra debemus advertere, quod peccator tristitiam sui delicti et exteriorem confessionem factam sacerdoti, de quorum utroque simul et divisim dicitur hoc nomen *penitencia*, triplex beneficium consequitur: primum quidem, quoniam ab interiori culpa mundatur et in ipso Dei gracia reformatur; secundum vero, quoniam a debito dampnacionis eterne, ad quam ex culpa obligatus fuerat, absolvitur; tercius autem, quoniam ecclesie reconciliatur, id est fidelium consorcio reunitur seu reuniri debet': *DPb*, II. 6. 4.

law of grace dictates that observance of these rites will cause demerit to be removed: obedience to the law prescribing these sacramental works will result, through the power of Christ, in the observer's no longer meriting punishment. The other sacraments, such as Holy Communion, principally produce or conserve grace. By obeying the law's prescriptions about these rites, one performs works that merit eternal happiness. Sacraments are part of the works prescribed by the law through which one merits an eternal reward. Since they are viewed within the context of grace as merit, the effect of the sacraments in the present is to produce a relation to the future; hence, the efficacy of the sacraments will be experienced in the future when one receives the reward of eternal happiness.

3. Internal: *Habitus* or Character

The third general meaning of grace in *Defensor pacis*, after grace as the *plenitudo potestatis* of God and grace as merit (the law of grace), is grace as a habit or character in the soul. Since Marsilius has described the law of grace in terms of merit, we might expect him to supplement that with an account of grace as an internal power to fulfil the law. Marsilius's evangelic law states that grace is necessary to merit eternal happiness, and so it would seem that he would also follow the tradition in describing how grace is necessary to follow the doctrine of divine law.²⁸ Grace would thus not only cause observance of the law to merit eternal happiness, but it would also help to cause observance of the law. According to Aquinas, for example, grace is an internal quality — a habit or character of the soul — that enables a Christian to fulfil the law.²⁹ Marsilius does indeed discuss grace as intrinsic character or habit of the soul, but this discussion

²⁸ For St Paul on the necessity of grace as a power to live the law, see Romans 3. 19–25, Romans 7. 14–8. 4, and Galatians 3. 19–22. For Augustine's account, see *De gratia Christi et peccato originali*, 24–26, 36–37; *Enchiridion ad Laurentium de fide, spe, caritate*, 9; *Civitas Dei*, XXI. 16; *De diversis quaestionibus VII ad Simplicianum*, I. 1. 6–14; *Confessiones* VIII. 21. 27, X. 29. 40, X. 31. 45, X. 37. 60. For Aquinas's description, see: Thomas Aquinas, *Summa theologiae*, ed. by Medieval Institute of Ottawa (Ottawa: Piana, 1953), 1a2ae, qu. 109, art. 4; *In Epistolam ad Romanos* 2. 3 and 8. 1.

²⁹ See *MPMPP*, p. 153. For Aquinas's doctrine of grace as a quality of the soul, see *Summa theologiae*, 1a2ae, qu. 110, art. 1–2.

is limited to the character that passes into the soul of a priest on the occasion of the sacramental laying-on of hands.³⁰

While Marsilius has much to say about the manner in which grace is received through baptism and penance, he is silent about the way that grace is received through the sacrament of the Eucharist. The grace received through baptism and penance is more politically significant for Marsilius than the grace received in Communion. Marsilius's approach to the sacrament of the Eucharist is not unlike his approach to the doctrine of the Trinity: he asserts the general orthodox position and sees no need to go beyond that. There is no doubt about his adherence to the doctrine of transubstantiation, which is an act that only priests can perform.³¹ Priests receive at ordination the power to transubstantiate bread and wine into the body and blood of Christ. The power of the priesthood to perform this and other priestly acts is a supernatural habit or character of the soul.³² Although Marsilius is reticent to speak about the grace that occurs through reception of the body and blood of Christ, he affirms quite simply that

³⁰ On the occasion when Marsilius does mention theological virtues and the gifts of the Holy Spirit, they are understood according to his general treatment of the law of grace as merit. The spiritual is that which is orientated to a future, as opposed to a temporal, reward; so the emphasis with respect to the theological virtues and gifts of the Holy Spirit is on their future effect: 'Rursum ad propositum magis dicitur hoc nomen *spirituale* de lege divina, de doctrina et disciplina preceptorum et consiliorum secundum ipsam et per ipsam. In quam siquidem etiam significationem veniunt omnia ecclesiastica sacramenta et ipsorum effectus, omnis gracia divina, virtutes omnes theologice atque dona spiritus sancti ordinancia nos ad vitam eternam' (*DPb*, II. 2. 5). In another passage Marsilius accounts for the deferral of the early disciples to the apostle Peter, in part, through the grace of the Holy Spirit. Marsilius does little here to explain the causality of such grace, but what the Holy Spirit inspires seems to be recognition of the merit that Peter and Paul achieved through their extraordinary conformity to the evangelical law (see *DPb*, II. 22. 16). His main point is that the deference to Peter was a voluntary decision based on personal piety rather than a necessity: 'Racionabiliter opinandum, multitudinem apostolorum atque fidelium convenisse suadente fortasse apostolorum aliquo vel aliquibus caritate fervencioribus, reliqua quoque multitudine spiritus sancti gracia et inclinacione obtemperante faciliter' (*DPb*, II. 22. 15).

³¹ 'Per quam siquidem iisdem aut ipsorum successoribus in hoc officio, non aliis, potestatem contulit sub certa forma verborum ab ipsis et eorum singulis dicta transsubstanciandi panem et vinum in verum corpus et sanguinem eius': *DPb*, I. 19. 5.

³² 'Hic siquidem character sacerdotalis, sit unus aut plures, potestas est, per quam sacerdos consecrare potest ex pane et vino corpus et sanguinem Christi benedictum cum certa verborum pronunciacione, ac reliqua ecclesiastica sacramenta ministrare; per etiam solvere potest et ligare homines a peccatis': *DPb*, II. 15. 2. 'Si per officia ecclesiastica intelligantur sacri ordines et characteres, qui cum hiis imprimuntur in anima velut habitus quidam': *DPb*, II. 28. 28.

the grace received through ordination that gives the priest the power to transubstantiate is a habit or character of the soul.³³ God alone, without any human mediation, is the cause of this internal character received in the sacrament of Holy Orders: the laying-on of hands by the bishop is not a necessary efficient cause of grace in ordination.³⁴

Political Importance of the Three Meanings of Grace

The third meaning of grace is most significant in its limited usage. Grace as an internal character or habit is used to describe the power of the priesthood but not to describe the nature of grace in general. There are two ways to interpret Marsilius's silence about grace as an internal character that enables the Christian to live the law. It could be that Marsilius accepts such an understanding of grace, but there was no occasion or need to introduce that concept here, which would be more proper to an explicit treatise on grace or to a debate over Pelagianism. There are, however, two aspects of Marsilius's discussion of grace that render this reading unlikely. First, according to Marsilius, the Mosaic law could be observed. Second, what Christ and the law of grace added was a new content (Christ's kingdom is not of this world, and this explains, for example, poverty as a virtue) and the possibility of meriting the reward of eternal happiness. Grace is not a new power to live divine law but a new power to merit future reward through observance of the law.

The more likely interpretation, then, is that Marsilius was silent about grace as an aid to live divine law because he did not accept this view of grace, and he could not have accepted such a view of grace because of the impact that it would have on political philosophy. If Marsilius were to take seriously the notion of grace as power to live the divine law, he would have to take more seriously the notion of the divine law as law now in the present world. Law requires some power to enforce obedience, and this is what Marsilius says that divine law lacks in this world. So, if the evangelical law were both a doctrine and the power to live that doctrine, it would be a law now. According to this view, Mosaic law, which was enforced by external rewards and punishments, typically of corporeal nature,

³³ 'Unctione Christus: si unctionem intendat gratie vel spiritus sancti, que dataur cum sacerdotali caractere, verum est, quam quilibet sacerdos eciam suscipit': *DPb*, II. 18. 22.

³⁴ See *DPb*, II. 15. 10, and II. 17. 8.

is superseded by the evangelic law that is empowered from within.³⁵ Since the evangelic law is not simply a doctrine but a power, it would be even more of a law now than civil law. The Christian, through grace, shares in the life of Christ, the lawgiver, and so shares in his power to turn doctrine into law.³⁶ Marsilius's separation of doctrine from law would be endangered by such a focus on grace as a power to live the evangelic law. To put this into more Marsilian language, were he to consider seriously grace as power to live the divine law, Marsilius would have to add another definition of *plenitudo potestatis*. In this case, *plenitudo potestatis* would not be the omnipotent power of Christ, or unrestrained human power, or unlimited power over civil and ecclesiastical matters, but the power to do what is commanded by the evangelic law. Thus it would not be simply, or even principally, the final judgement that makes one obey the law: it would be primarily the law itself as possessing a kind of fullness of power. In Marsilius's understanding, however, the only power that the evangelic law has in this world is that of causing merit in the next world.

The objection might be raised, however, that Marsilius ignores grace as the power to obey law not because he denies it but because it is irrelevant to the account of 'force' in the definition of law, which must include the capacity to punish those who do not conform to the doctrine.³⁷ Justice must be rendered to

³⁵ 'Dicendum quod omnes differentiae quae assignantur inter novam legem et veterem, accipiuntur secundum perfectum et imperfectum. Praecepta enim legis cuiuslibet dantur de actibus virtutum. Ad operanda autem virtutum opera aliter inclinantur imperfecti, qui nondum habent virtutis habitum; et aliter illi qui sunt per habitum virtutis perfecti. Illi autem qui nondum habent habitum virtutis, inclinantur ad agendum virtutis opera ex aliqua causa extrinseca; puta ex comminatione poenarum, vel ex promissione aliquarum extrinsecarum remunerationum, puta honoris vel divitiarum vel alicuius huiusmodi. Et ideo lex vetus, quae dabatur imperfectis, idest nondum consecutis gratiam spiritualem, dicebatur lex timoris, inquantum inducebat ad observantiam praeceptorum per comminationem quarundam poenarum. Et dicitur habere temporalia quaedam promissa. Illi autem qui habent virtutem, inclinatur ad virtutis opera agenda propter amorem virtutis, non propter aliquam poenam aut remunerationem extrinsecam. Et ideo lex nova, cuius principalitas consistit in ipsa spirituali gratia indita cordibus, dicitur lex amoris. Et dicitur habere promissa spiritualia et aeterna, quae sunt obiecta virtutis, praecipue caritatis. Et ita per se in ea inclinantur non quasi in extranea, sed quasi in propria. Et propter hoc etiam lex vetus dicitur "cohibere manum, non animum," quai qui timore poenae ab aliquo peccato abstinet, non simpliciter eius voluntas a peccato recedit, sicut recedit voluntas eius qui amore iustitiae abstinet a peccato. Et propter hoc lex nova, quae est lex amoris, dicitur "animum cohibere": *Summa theologiae*, 1a2ae, qu. 107, art. 1, ad 2m.

³⁶ *Summa theologiae*, 1a2ae, qu. 107, art. 1, ad 2m.

³⁷ See *DPb*, I. 10. 4.

those who reject the law or it is not law. The notion of grace as the power to obey the law does not suffice for the definition of law because it cannot account for those who do not obey: it is not that the law of grace is imperfect in the present moment because the disobedient are not accounted for, the law of grace is not, and was not meant to be, law until all are brought under its justice at the final judgement. Aquinas, on the other hand, represents the view that the evangelic law is law now.³⁸ The absence of judgement by divine law in this world does not prevent Aquinas from considering divine law to be law in this world because judgement has been replaced by something more perfect: the power of grace is superior to the power of judgement because it is more internal and more effective, and hence the evangelic law is not only law now, it is superior to both civil law and Mosaic law. Since civil law and the Mosaic law lack this internal power, they must rely on judgement as the motivation for obedience. Aquinas concedes that not all are subject to the inward power of grace, and hence promises of reward and punishment are included in the evangelic law, though this does not constitute the essence of the new law, nor does it detract from it as law.³⁹

Marsilius must deny this understanding of divine law, and the account of grace supporting it, because there can be no peace, he says, if there are two sets of laws in one place at one time.⁴⁰ This, for Marsilius, is as evident as the principle of noncontradiction: there can be no peace in the world if there are two competing laws as there can be no peace in the mind if there are two

³⁸ See *DPb*, II. 15. 10, and II. 17. 8.

³⁹ See *DPb*, II. 15. 10, and II. 17. 8. The passage concludes thus: 'Fuerunt tamen aliqui in statu veteris testamenti habentes caritatem et gratiam Spiritus Sancti, qui principaliter expectabant promissiones spirituales et aeternas. Et secundum hoc pertinebant ad legem novam. Similiter etiam in novo testamento sunt aliqui carnales nondum pertinentes ad perfectionem novae legis, quos oportuit etiam in novo testamento induci ad virtutis opera per timorem poenarum, et per aliqua temporalia promissa. Lex autem vetus etsi praecepta caritatis daret, non tamen per eam dabatur Spiritus Sanctus, per quem "diffunditur caritas in cordibus nostris"' (*Summa theologiae*, 1a2ae, qu. 107, art. 1–2).

⁴⁰ 'Quibus eciam non contenti, sed secularium contra Christi et apostolorum preceptum aut consilium petentes fastigia, in legum laciones, seorsum ab hiis que civium universitatis, proruperunt, omnem clerum ab hiis decernentes exemptum, civile scisma et principatuum supremorum pluralitatem inducentes ex ipsis, quam velut impossibilem humane quieti, certam huius experientiam inducentes, demonstravimus 170 prime. Hec enim pestilencia Ytalici regni radix est et origo, ex qua cuncta scandala geminaverunt et prodeunt, et qua stante numquam civiles ibidem cessabunt discordie': *DPb*, II. 23. 11.

competing opinions.⁴¹ If both opinions are true, they must be true in different ways or at different times. For Marsilius, both divine and civil laws can be true because they are laws at different times. If the divine law is the law of grace, then the effect of grace, its power, must be postponed to the future. Political peace is impossible if grace is not, so to speak, 'futurized'. In focusing on grace as merit — as causing a future reward — Marsilius is able to render the Christian doctrine of grace compatible with temporal peace. Christianity is a singular threat to temporal peace because it introduces a notion of grace that establishes a law in addition to civil law. That threat is neutralized if the focus on grace is shifted from grace as an internal character or as the indwelling of the Holy Spirit to grace as merit because this amounts to a shift from the present to the future.

It is apparent, then, that Marsilius's account of grace is subsequent to and dependent upon his political philosophy. Marsilius did not and could not have begun with a theology of grace that seeks first to explain grace as the indwelling of the Holy Spirit or as an internal quality of the soul. If Marsilius had begun there, his account of grace would focus on the transformation of the Christian in this life and in this world. Marsilius acknowledges a transformation in the priest due to a new internal character or habit, but this is described as a new power to perform the act of transubstantiation, and he does not speak about the transformation of the Christian through grace other than the accumulation of merit. Again, with regard to sacramental grace, the sacrament of the Eucharist is not central. There is, Marsilius acknowledges, a transformation in the Eucharist, but it occurs in the bread and wine: he has nothing to say about how the reception of grace through Communion transforms the recipient. Understanding grace as that which causes a deifying transformation in the believer during this life would complicate, if not nullify, the deferral to the next world of the power possessed by the law of grace.

What Marsilius cannot allow in his account of grace is that the law of grace is a fundamentally different kind of law from either civil law or the law of Moses. A starting point in grace as deification would entail that the power in the law of

⁴¹ 'Qua quidem enim ratione convenire tenentur cives seu subditi vocati ad mandatum, locum et horam unius talium principatuum, eadem propter mandatum ad locum et horam alterius; cumque hora eadem, loca vero possint esse diversa. Et rursum, quod volet unus principatuum proponere, diversum forte ab hoc volet alter; cum tamen in locis diversis esse simul, nec simul diversa intendere possibile videatur': *DPb*, I. 17. 4. Just as one instance should suffice for recognition of the principle of noncontradiction, so one instance, namely Italy, should suffice to recognize the impossibility of two sets of laws: see *DPb*, II. 23. 11.

grace is not principally based on judgement. If that were the case, then the power of the law of grace would be internal to it, grace would the power to obey the law as well as the doctrine of the law, and the law of grace would not be dependent on an external threat to empower obedience, although there would be a judgement at the end of time to distinguish whether one has participated in the law and to what degree. If the law of grace commands charity and instils charity, the role of judgement is diminished. To return to the analogy of the principle of noncontradiction, two competing opinions cannot be true at the same time in the same way. Instead of saying the evangelical law is law in a different way than civil law or the Mosaic law, Marsilius assigns a single definition to law; that is, its power is based on judgement. The law of grace is therefore distinguished primarily by time: it becomes law with the final judgement. This account of the law of grace requires a reduction of grace to the meriting of future reward.

Does Marsilius Deny Grace as Condign Merit?

The preceding analysis of the three meanings of grace makes possible an assessment of Stephen Torracco's claim that 'implicitly, Marsilius rejects Thomas's teaching that by divine grace human actions merit eternal life *ex condigno* (by a strict equality)'.⁴² According to Marsilius, grace causes us to merit eternal life by a certain congruity (*congruitas*), and Torracco traces this notion of congruity back to Aquinas, who distinguished between merit *ex condigno* and merit *congruitate quoddam*.⁴³ Torracco explains the Thomistic distinction:

In q. 114 [of *Summa theologiae* 1a2ae], Thomas argues that by this grace freely bestowed by God, our actions merit external life *ex condigno* (by a strict equality). Without grace there cannot be any merit *ex condigno* because of the greatest inequality between God

⁴² Torracco, p. 93.

⁴³ See Torracco, pp. 91–92: 'Marsilius says that by the grace of God human acts merit eternal life by the gracious ordinance of God, by a certain *congruity* (*gratiosa ordinatione Dei* [...] [sic] *congruitate quoddam*)' (*DPb*, I, 6. 4). Marsilius wants the reader to notice this phrase because he repeats it and even calls the reader's attention to this repetition. The term *congruitas* calls to mind the lively discussion among predecessors and contemporaries of Marsilius regarding the relationship between human acts and divine grace in terms of meriting eternal life. In I, 6 Marsilius mentions none of these thinkers. In the whole of the *Defensor Pacis* he mentions only one of these, and only once: Thomas Aquinas, Marsilius's more illustrious predecessor and the representative of a better known form of Christian Aristotelianism (*DPb*, II, 13.24).'

and man. Instead there would be *congruitas ordinatione Dei* (a proportionate equality by the ordinance of God); for it seems fit, Thomas says, that God should make return, in proportion to the excellence of His Power, to the man who acts in the degree of his own power.

The positions of Marsilius and Thomas are in direct conflict. What Thomas says would be the case (*congruitas ordinatione Dei*: the proportionate equality by God's ordinance) only with the absence of grace, Marsilius argues is the case even with the presence of grace. Later when examining the consequences of the observance of supreme poverty, Marsilius quotes Saint Ambrose, 'For your hardships will be repaid with equal glory,' and he interprets 'equal' as 'proportional' (*proportionalis*).⁴⁴

Marsilius uses the term *congruitas* instead of *ex condigno* to describe how the Christian merits eternal life, and so Torracco concludes that Marsilius is denying that grace causes a condign or strict equality between the one meriting and what is merited. Nevertheless, since Aquinas thinks that congruous or proportional merit is possible naturally, one wonders, if Torracco is right to surmise the allusion to Aquinas, whether Marsilius is denying supernatural grace altogether. This is not the conclusion that Torracco reaches, although he does see Marsilius emphasizing nature.⁴⁵ He suggests that an 'extrinsicist' account of grace is what follows from Marsilius's understanding of merit as congruous rather than condign.⁴⁶

It is not, however, clear that Marsilius denies condign merit. Torracco cites as proof for this Marsilius's interpretation of a passage from Ambrose,⁴⁷ but when that discussion is viewed in context, it is manifest that Marsilius is denying an equality of merit among human beings in comparison to each other: he is not denying a strict equality or justice in the merit itself.⁴⁸ Marsilius's point about

⁴⁴ Torracco, p. 93

⁴⁵ 'Over and against Thomas and his less prudent successors, Marsilius uncompromisingly follows the path of nature' (Torraco, p. 95).

⁴⁶ 'By this teaching Marsilius anticipates Luther's extrinsicist view of grace [...]. In a word, for Marsilius grace in this world is perfected by nature' (Torraco, p. 97).

⁴⁷ See note 44, above.

⁴⁸ 'Quod autem tristitia sustinere in hoc seculo et a delectabilibus abstinere propter Christum, sit meritorium et consultum, apparet evidenter Matthei 50 et 190 ac Luce 60, unde quantum at tristitum toleranciam: *Beati pauperes* [...]. Idem 2 ad Corinthios 10, cum dixit quoniam *sicut socii passionum estis, sic eritis et consolaciones*. Ubi Ambrosius: *Quia equa gloria labori vestro retribuetur*, id est proporcionalis. Ad hec autem seculi tristitia et incommoda sustinenda non se omniquaque sic disponunt collegia personarum habentium dominium temporalium in communi, quinimo minus multis pauperibus in seculo, coniugatis, habentibus quandoque propria, eis tamen que ad vite sufficienciam sepius egentibus, hiis qui talia solum possident in communi': *DPb*, II. 13. 25.

the passage from Ambrose is that poor secular married couples may merit more, with respect to the beatitude of poverty, than (vowed) religious who lack private property. Merit is at the centre of Marsilius's doctrine of grace, and because human beings do not possess grace equally, they do not merit equally. Insofar as Marsilius does assert that the Passion of Christ alone makes possible the meriting of eternal life and happiness, Christians merit through Christ and his condign merit and justice. Human works have a certain 'congruity' to eternal life to the extent that they conform to what the law of grace has ordained as meritorious. Marsilius holds both a condign (strict equality) merit, because Christ alone is the cause of the human act meriting an eternal reward, and a congruous (proportional) merit, because human beings observe the commands and counsels that constitute merit to various degrees: human beings can cause what merits eternal happiness but not that it should merit eternal happiness. Since human beings merit eternal life only through the grace, i.e., Passion, of Christ, Marsilius is committed to the notion of condign merit.

Nevertheless, Marsilius's approach to condign merit is consistent with an extrinsic understanding of grace. Merit, according to Marsilius, is internal to the Christian in the sense that a relation to the future reward of eternal life belongs to the one meriting. To use Aristotelian language, one could say that an accidental quality of relation exists within the human being through grace, but, since the relation is to the future, what is merited does not yet exist within the human being. The law of grace causes the possibility of meriting eternal life and indicates what actions merit it, but the law does not cause eternal life to exist within the soul. Merit and reward are united within the soul only by the final judgement. The Passion of Christ causes merit; Christ's final judgement causes the reward. An intrinsic understanding of grace would be one in which merit and reward are not so separated because grace is the beginning of the new life that will be experienced in full after the final Resurrection: grace, in this case, would be the power to live the new law, which is not only a life in imitation of Christ but the eternal life of Christ. *Charitas*, in this more patristic view, is the law of grace, and it is also the life of the Trinity; consequently, grace is the beginning of deification.⁴⁹ In Marsilius's extrinsic understanding of grace, Christians are adopted children of God in the sense that they are heirs who will receive what is rightfully theirs at the end of this world. In a more intrinsic understanding of grace, eternal life is not only merited; it has already begun to exist. The disciple is an adopted child who has already begun to receive the

⁴⁹ See, for example, *Summa theologiae*, 2a2ae, qu. 23, art. 2, and qu. 24, art. 2.

inheritance.⁵⁰ Marsilius asserts continuity between this world and the next world with respect to merit, but, with respect to deification, discontinuity is emphasized: human beings are rewarded with the eternal life of God after the final judgement.

Conclusion: A Uniquely Marsilian Doctrine of Grace

In sum, Marsilius's account of grace is complex and unique. His emphasis on merit does not result in a purely extrinsic view of grace because he could not have abandoned the notion of grace obtained through ordination as an internal habit without denying the sacramental priesthood altogether. On the one hand, his view of grace seems reducible to Pelagianism, inasmuch as he allows for the possibility of observing the law of Moses without grace from the Passion of Christ. There is, however, an anti-Pelagian element to his account because there is no merit of eternal happiness without the Passion of Christ; that is, there is something new, supernatural, and radically creative about the grace of Christ. In spite of these tensions, Marsilius's doctrine of grace remains coherent: the extrinsicism does not contradict the intrinsicism because the latter is restricted to the priestly character, and nature needs grace because, even if nature is capable of following the commands of the divine law, it is not capable of causing the merit of eternal happiness.

Marsilius achieves consistency in his doctrine of grace by eliminating whatever is not compatible with the definition of law as coercive command, which is understood as a judgement that enforces obedience through the power to punish. Grace as the power to obey the command (the new law as both the command to charity and the gift of charity) does not meet the definition of law and, consequently, Marsilius ignores it. Equally absent is the notion of grace as deification. We are left, then, with the question whether such a position on grace can be reconciled with the Scriptures, especially with the Pauline notion of grace, and with the Fathers, since they emphasize grace as divinization. Although Marsilius's emphasis on grace as merit appears to maintain one of the most medieval approaches to grace, it is, in fact, consonant with his desire to bypass human authorities in order to return to the pure standard of Scripture understood

⁵⁰ *Summa theologiae*, 1a2ae, qu. 110 art. 4. For Aquinas on the difference between eternal life possessed now and in beatitude, see *Summa theologiae*, 1a2ae, qu. 113, art. 9.

literally.⁵¹ In his return to Scripture for an account of grace, Marsilius feels no obligation to assimilate the patristic doctrine of deification, and his return to Scripture pays less attention to the Pauline doctrine of grace than to the Gospels. What Marsilius sees in the Gospels is Christ himself preaching a new doctrine of merit and a final judgement at the end of time. He believes that his definition of law as coercive command is consistent with the preaching of Christ in the Gospels, and so he is less concerned with the question of whether his doctrine of grace is consistent with other authorities.

As Stephen Torraco has noted, Marsilius views the catastrophic misunderstandings of grace as resulting from its 'politicization'.⁵² Grace is politicized, for Marsilius, as soon as it is seen as law in this world, and this is contrary both to a literal understanding of the Gospels and to a correct understanding of Aristotle. Grace is depoliticized only if it transforms nature when this world comes to an end. Until the end of the world, grace determines what will be rather than what is, and the Passion of Christ created a radically new future rather than a radically new present. Indeed, if grace were a transformative power in this world, why would something as basic as temporal peace be so elusive within Christendom? All the good works prescribed by the law of grace — acts of charity, sacramental worship, voluntary poverty, and, not least, obedience to human law — can have an indirect effect on this world inasmuch as they support human law, but the power to transform comes from law, and in this world there is only a human law. Transformation through divine law is the eternal life received from God at the end of time; transformation through human law is the human establishment of temporal peace and sufficiency of life. When politicized, grace can destroy temporal peace and sufficiency of life; when depoliticized, we see that grace is not capable of transforming this world: for that we must look to human law and to Aristotelian philosophy.

⁵¹ See *LNEL*, pp. 71–78.

⁵² 'There was no one politically wise enough to steer the Church along the path of nature in the way that prudent men lead the many to civil peace and happiness. The doctrine of grace filled this void, and once its foot was in the door, there was virtually no stopping its full politicization and domination' (Torraco, p. 202; see also pp. 206 and 329).

HEART AND SOUL OF THE STATE:
SOME REMARKS CONCERNING ARISTOTELIAN
ONTOLOGY AND MEDIEVAL THEORY OF MEDICINE
IN MARSILIUS OF PADUA'S *DEFENSOR PACIS*

Alexander Aichele

The fact that Marsilius of Padua was a trained physician is well known and often mentioned but rarely used for the interpretation of his philosophical works, especially the *Defensor pacis*.¹ This is quite astounding considering the central metaphor in Marsilius's *chef d'oeuvre* — the state as an organism and its lawful order as health — is directly connected with the sphere of medicine.² There are also several biographical circumstances that strengthen the aforementioned surprise: Marsilius was not only a disciple and friend³ of the most famous physician

¹ An exception is partly Jeannine Quillet, *La philosophie politique de Marsile de Padoue* (Paris: Vrin, 1970), pp. 59–71. Hereafter citations of this text appear as *LPP*). Also Ewart Lewis, 'The "Positivism" of Marsiglio of Padua', *Speculum*, 38 (1963), 541–83, who states Marsilius's work-related 'unfamiliarity' 'with a substantial part (sc. theology, civil and common law) of previous thought' (p. 544), despite his training in the liberal arts and in medicine and concentrates on legal theory, though.

² Marsilius von Padua, *Defensor pacis*, ed. by Richard Scholz, *Fontes Iuris Germanici Antiqui*, 2 vols (Hannover: Hahnsche Buchhandlung, 1932/33), I. 2. 3. Hereafter, citations of this text appear as *DPb* along with discourse, chapter, and section number. English translations are from Marsilius of Padua, *Defensor pacis*, trans. by Alan Gewirth, with a new Afterword and Bibliography by Cary J. Nederman (New York: Columbia University Press, 2001). Hereafter citations of this text appear as *DPc* along with discourse, chapter, section, and/or page number.

³ See Nicolai Rubinstein, 'Marsilius of Padua and Italian Political Thought of His Time', in *Europe in the Late Middle Ages*, ed. by Hale, Highfield, and Smalley (London: Faber & Faber, 1965), pp. 44–75 (pp. 49–50).

of his age,⁴ Pietro d'Abano, who taught and wrote on philosophy of nature, but he also practised as a doctor for the majority of his life, including as a private physician of Louis the Bavarian,⁵ as some scholars assume.⁶

In spite of this evident connection between Marsilius's life and thought with the art of medicine, the lack of scholarly investigation in this area could be justified since there is no physical evidence for a possible influence of a contemporary theory of medicine in the *Defensor pacis*.⁷ That is to say: Marsilius does not — with the single and tiny exception of Galen's *De foetuum formatione*⁸ — quote any medical authority, for example, neither Avicenna nor his teacher Pietro d'Abano. Therefore, there may be a touch of speculation in the attempt to interpret some passages of the *Defensor pacis* against the medical background Marsilius surely had. Nevertheless, doing so may aid in understanding one of the central thoughts of the *Defensor pacis* more clearly, which lies in the analogy between organism and state.

Whether or not such an attempt is useful can be proved by an experiment, which is what shall be done in this essay. First, I will describe and analyse the body-state analogy in some detail, laying out its implications and some problems that arise if it is read with a strictly Aristotelian physiology. The second part will offer an outline of medieval theories of the body and its parts, which were developed since antiquity by anatomical studies and dissection practices in concurrence with Aristotle. This development of anatomy and physiology following Galen led to a tendency to harmonize the teachings of

⁴ See Nancy Siraisi, *Medieval and Early Renaissance Medicine: An Introduction to Knowledge and Practice* (Chicago: Chicago University Press, 1990), p. 22.

⁵ For the political and theoretical conflicts of this time, see the short survey of J. A. Watt, 'Spiritual and Temporal Powers', in *The Cambridge History of Medieval Political Thought, c. 350–c. 1450*, ed. by Joseph Henderson Burns (Cambridge University Press, 1997), pp. 367–423, and especially the study of Rubinstein.

⁶ See Michael Löffelberger, *Marsilius von Padua: Das Verhältnis zwischen Kirche und Staat im 'defensor pacis'* (Berlin: Duncker & Humblot, 1992), p. 18, and Jürgen Miethke and Arnold Bühler, *Kaiser und Papst im Konflikt: Zum Verhältnis von Staat und Kirche im späten Mittelalter* (Düsseldorf: Schwann, 1988), p. 50.

⁷ See Cesare Vasoli, 'La *Politica* di Aristotele e la sua utilizzazione da parte di Marsilio da Padova', *Medioevo*, 5 (1979), 237–57 (p. 248).

⁸ See *DPc*, I, 15, 5.

Galenism and Aristotelianism, which were drifting apart in the medieval theory of medicine. This phenomenon can be observed well in Avicenna's *Liber Canonis in medicina*,⁹ which served as the most important and fundamental textbook for medical faculties at medieval universities.¹⁰ The same can be said of Pietro d'Abano's *Conciliator controversarium, quae inter philosophos et medicos versantur*,¹¹ which is worth special interest for biographical reasons. In the final section, I will try to solve some seeming incoherencies of Marsilius's use of the body-state analogy by application of some presented medical teachings.

I. The Aristotelian Use of the State-Animal Analogy

Roughly stated, an analogy has the form: A is to B as C is to D. Its purpose is to explain the nature of the relation of one pair, which is unknown, by the other pair's known relation. The known part of Marsilius's analogy is the living organism. It is treated by philosophy of nature, viz., physics and medicine, in quite separate ways. If Marsilius's choice of the analogy has any use, a distinctive feature of an unknown must be explained by another's known. That is to say, the external and internal structure of the state that is sought and analysed in Marsilius's study must be explained by the external and internal structure of the living organism.

This relation implies that the latter is known well. In addition, it implies that a clear understanding of Marsilius's concept of state requires knowledge about the physiological theory on which he founds this analogy. Marsilius uses this concept in two ways. It can be viewed externally on the one hand and internally on the other hand. Establishing the former, Marsilius quotes the *locus classicus*, Aristotle's *Politics*, and for the only time Galen:¹²

⁹ Avicenna, *Liber Canonis in medicina, De medicinis cordialibus, et Cantica, ex Arabico sermone in Latinum conversa a Gerardo Carmonensi* (Basileae: per Ioannes Heruagios, 1556). For a summary see Lenn E. Goodman, *Avicenna* (New York: Routledge, 1992), pp. 32–37.

¹⁰ See Gotthard Strohmaier, 'Die Rezeption und die Vermittlung: die Medizin in der byzantinischen und in der arabischen Welt', in *Die Geschichte des medizinischen Denkens. Antike und Mittelalter*, ed. by Mirko D. Grmek (Munich: C. H. Beck, 1996), pp. 151–81, (pp. 174, 179–80), and Siraisi, pp. 71–72.

¹¹ Petro Abano Patavino philosopho ac medico clarissimo, *Conciliator controversarium, quae inter philosophos et medicos versantur* (Venetiis: apud Iuntas, 1565).

¹² It must be mentioned that the Philosopher's *Politics* were of very modest importance in the thirteenth and fourteenth century; see Georg Wieland, 'Die Rezeption der aristotelischen Politik und die Entwicklung des Staatsgedankens im späten Mittelalter: am Beispiel des Thomas

In this respect human arrangements appropriately imitated nature. For the state and its parts established according to reason are analogous to the animal and its parts perfectly formed according to nature as it is apparent from Aristotle's *Politics*, Books I and V, chapter 2. The action of the human mind in appropriately establishing the state and its parts was proportionate, therefore, to the action of nature in perfectly forming the animal.¹³

According to our short, formal description of analogy, we can state the following relation: Nature is to the animal and its parts as reason (*ratio*) is to the state (*civitas*) and its parts. Even the internal relation that is common to both parts of the analogy is precisely mentioned: The actions of nature, like those of reason, 'perfectly form' (*perfecte formatis*; *perfecte formando*) their object. Notwithstanding the fact that the result of these activities is a natural living organism on the one hand and an artifact on the other hand, there must be a structural identity of both processes.

So, what does *perfecte formare* mean? Does it refer to the process of materially producing a certain individual entity that was not there before this production process, or does it refer to the act of constructing the nature of a certain entity, an entity which must have a few substantial features, in order to subsume an individual under this kind of entity, for instance, a species? Or, asking in the Aristotelian way, does nature function as *causa efficiens* or as *causa formalis* in *perfecte formare* a given animal? Regardless of whether or not Marsilius refers to Aristotle in a strictly Aristotelian way, it helps to look at the indicated passages of the *Politics*.¹⁴ Since at issue is not how to read the passages in

von Aquin und des Marsilius von Padua', in *Rechts- und Sozialphilosophie des Mittelalters*, ed. by Erhard Mock and Georg Wieland (Frankfurt a. M.: Peter Lang, 1990), pp. 67–78 (pp. 68–69).

¹³ *DPc*, p. 63; 'Fuit autem in hoc humana sollicitudo convenienter imitata naturam. Quia enim civitas et ipsius partes secundum rationem institute analogiam habent animali et suis partibus, perfecte formatis secundum naturam, ut apparet ex Aristotele 1^o et 5^o Politice, 2 is capitulis. Qualis igitur est nature accio in animali perfecte formando, proporcionata fuit ea que humane mentis ad civitatem et ipsius partes instituendas convenienter': *DPb*, I. 15. 5.

¹⁴ For an extended discussion of Marsilius's Aristotelicism, see Alan Gewirth, *Marsilius of Padua and Medieval Political Philosophy* (New York: Columbia University Press, 1951). Hereafter, citations of this text appear as *MPMPP*; Cary J. Nederman, 'Character and Community in the *Defensor pacis*: Marsiglio of Padua's Adaptation of Aristotelian Moral Psychology', *History of Political Thought*, 13 (1992), 377–90; Luigi Olivieri, 'Teoria aristotelica dell' opinione e scienza politica in Marsilio da Padova' *Medioevo*, 5 (1979), 223–35; Jeannine Quillet, 'L' aristotélisme de Marsile de Padoue', *Miscellanea Medieavalia*, 2 (1963), 696–706, and idem, 'L' aristotélisme de Marsile de Padoue et ses rapports avec l' averroïsme', *Medioevo*, 5 (1979), 81–123; and Vasoli.

context of an interpretation of Aristotle's political philosophy,¹⁵ I will use only the contemporary translation of William of Moerbeke.¹⁶ The corresponding passage runs as follows:

For wherever there is a combination of elements, continuous or discontinuous, and something in common results, in all cases the ruler and the ruled appear; and living creatures acquire this feature from nature as a whole. Some rule exists also in things that do not share in life, for instance over a musical mode; but an investigation of these topics would perhaps take us somewhat far afield. First, the living creature consists of soul and body; and of these the former is ruler by nature, the latter ruled. Now we ought rather to contemplate the natural in things whose condition is according to nature, not in corrupted ones. We must therefore consider the man too who is in the best condition, both of soul and body, one in whom this is conspicuous — because the poor and unnatural conditions of wretched men, or of those in a wretched state, will often give the impression that the body is ruling over the soul. However that may be, it is, as we say, within al living creature that we first find it possible to see both the rule of a master and that of a statesman. For the rule of soul over body is a master's rule, while the rule of mind over appetite is a statesman's or a king's. In these cases it is clear that it is both natural and beneficial for the body to be ruled by the soul, and for the emotional part to be ruled by the mind, the part which possesses reason. The reverse, or parity, would be damaging to everything.¹⁷

¹⁵ See Mario Grignaschi, 'Le rôle de l' aristotélisme dans le *Defensor pacis* de Marsile de Padoue', *Revue d'histoire et de philosophie religieuses*, 35 (1955), 301–40.

¹⁶ This choice, clearly, does not indicate the exclusion of other, especially Islamic sources. See Quillet, 'Averroïsme', pp. 84–85.

¹⁷ Aristotle, *Politics: Books I and II*, trans. by Trevor J. Saunders (Oxford: Oxford University Press, 1995), pp. 6–7; 'Quandocumque enim ex pluribus constituta sunt, et fiunt unum aliquod commune, sive ex coniunctis, sive ex divisivis, in omnibus videtur principans et subiectum. Et hoc ex omnium natura inest animatis: etenim in non participantibus vita est quidem principatus, puta harmoniae. Sed haec quidem forte magis extrinsecae sunt speculationis. Animal autem primum constat ex anima et corpore: quorum haec quidem principans est natura, hoc autem subiectum. Oportet autem intendere ex secundum naturam habentibus, magis quam natura, et non in corruptis. Propter quod, et optime dispositum et secundum corpus et secundum animam hominem considerandum, in quo haec palam. Pestilentium enim et prave se habentium videbitur principari multoties corpus animae, propter prave et praeter naturam habere. Est quidem sicut dicimus primum in animali contemplari et despoticum principatum et politicum. Anima quidem corpori enim dominatur despotico principatu, intellectus enim appetitui politico et regali. In quibus manifestum est, quod secundam naturam et expediens corpori regi ab anima, et passibili parti ab intellectu, et parte rationem habente; ex aequo autem aut e contrario, nocivum omnibus': *Aristotelis libri Politicorum octo*, in *S. Thomae Aquinatis in octo libros Politicorum expositio*, ed. by Raymundo M. Spiazzi (Turin/Rome: Marietti, 1966), pp. 17–18 (L. I, L. III, 32–34).

Here, Aristotle speaks about the internal structure of entities that are composed of several parts, i.e., other entities forming the whole in unity. The common feature of the parts that constitutes the unity of the entity is, strictly spoken, simply their being part of the whole. Aristotle mentions these entities generally, regardless of whether their parts are either coupled by nature, like body and soul, or if they are separated physically, like slave and master.¹⁸ These examples lead to the point of the argument: every compounded entity, be it an animal or an inanimate object, has a governing part and a governed part. So, what is the essence of the relation between these parts?

Aristotle seems to understand the function of the governing part quite ontologically. Since it appears from his example for inanimate objects that the governing part is that which makes the whole a definite unit of this or that species, it is the governing part that makes an object the object it is. In other words, the governing part serves as the formal cause of definite objects. They would be indefinite entities without it, regardless of the fact that entities of such a kind are excluded from the Aristotelian ontology, which does not know entities without a certain essence. The example Aristotle uses is the concept of harmony as a compounded entity. 'Harmony' in the Greek theory of music does not, as in modern ages, refer to the vertical order of polyphonic sound, i.e., concurrence of several voices in a given musical unity. Rather, it means the whole tune in which a piece of music is set. This tune is characterized as a certain one by the *mese* which is the harmony's governing part (*hegemon*).¹⁹ In the sphere of living entities, the soul governs the body. Since there is no other example or differentiation it can be assumed that the governing part of animals has the same function as in unanimated objects. This could be corroborated by analysing Aristotle's definition of the soul as entelechy in *De anima*, which possesses ontological aspects as well as epistemological functions.²⁰ However, there is no need to do that at this time. In our context it is just to be stated clearly, that at the passage of the *Politics* which Marsilius refers to the governing part of any compounded entity holds the position of its formal cause in the aforementioned way.

¹⁸ See Eckart Schütrumpf, 'Anmerkungen', in Aristoteles, *Politik*, trans. and ed. by Eckart Schütrumpf, 4 vols (Berlin: Akademie-Verlag, 1991), I, 253–54.

¹⁹ See Schütrumpf, I, 252–53.

²⁰ See Alexander Aichele, 'Energie oder Entelechie? Der metaphysische Grund der Bewegung bei Leibniz und Aristoteles', in *Nihil sine ratione. Mensch, Natur und Technik im Wirken von G. W. Leibniz*, ed. by Hans Poser, 4 vols (Hannover: Gottfried-Wilhelm-Leibniz-Gesellschaft, 2002), IV: *Nachtragsband*, pp. 127–34, (pp. 131–32).

The efficient cause of this principle, on the other hand, is universal nature, which does nothing in vain and produces nothing that is superfluous, tending to realize the potentialities of an entity according to its concept. Clearly then, as Aristotle argues, it is better to study the natural condition of an entity, scrutinizing an object that exists according to nature and which is not spoilt — that is, an individual which, without any flaw, perfectly represents its species. Therefore one has to examine an individual at its best — that is, in its natural condition — to see the organizing principle of its parts distinctly.

In man's best state, as with any being having a soul consisting of several parts, the relation between governing and governed part is doubled: the soul, by nature, governs not only the body, but also the soul's higher part governs the lower ones. In the case of man, the rational part governs the moving part. Any other relation between the soul's parts is against nature and insofar perverted. Further, the soul's external relation to the body differs from its internal government. According to Aristotle, the former consists of a despotic rule of the soul over the body, which describes the relation of master and slave. The slave serves only as an instrument for his master's aims and has, strictly spoken, neither essence nor existence on its own — a relation characterizing tyrannies, oligarchies, and democracies as well. The internal, on the other hand, has the form of political government in civil societies where every citizen is treated as free and equal under the rules of justice, which is also applied to monarchies, aristocracies, and republics. Simply speaking, the natural state of man, i.e., the best of all possible conditions he could be in, consists in despotic government of the soul over the body, which is treated as the soul's instrument and looked after only in order to ensure its adequate functioning, and political government within the soul, wherein the parts have to work together to maintain the natural state of the whole.

Although he does not mention it in his *Politics*, it is Aristotle's opinion that physically, the three-part soul is bound to the heart, or, more exactly, to the blood. The blood as the medium of mental processes that enables every part of the soul to fulfil its function comes into being in the heart, which, consequently, must be every animal's central organ, developed first and destroyed last.²¹ Even if Aristotle also thinks that the heart is three-part, he does not assign to its anatomical parts the soul's particular functions, nor is there any further distribution of them in the *Politics*. However, as we will see later, Marsilius

²¹ See the short summary of Ingemar Düring, *Aristoteles: Darstellung und Interpretation seines Denkens* (Heidelberg: Carl Winter, 1966), pp. 537–41.

doggedly treats Aristotle's description of the state as a living, natural entity in a physiological way.

The odd expression of *perfecte formare* must still be clarified. It appears in the quoted passage two times, and in both cases, is tied together with nature. The first time, nature serves as the guideline or model of the built-up living entity, its formal cause (*perfecte formati secundum naturam*). The second time, nature itself produces the animal, so that nature functions as its efficient cause also (*nature accio in animali perfecte formando*). As is indicated by the exclusive use of participial forms of *formare* and the purely adverbial use of *perfecte*, the latter function is the specific and main characteristic of the way natural objects are produced by nature and how they exist naturally, i.e., in their best state.

Now, *perfecte* in medieval Latin usually means 'to be' or 'to do' something in a flawless, complete, or perfect way. This precisely corresponds to Aristotle's classical definition of nature both as formal cause and as creator of natural objects.²² Therefore, one must ask what makes nature's way of production perfect, and what could be called 'perfect' in the case of existing individuals in space and time.

The production's perfection lies in the impossibility of producing a natural object against nature. Essentially meaning it is a simple ontological fact that every natural object is a member of a certain species right from the start of its existence. Necessarily, nature creates its objects according to their specific concept, which defines their natural essence as unable to undergo any substantial changes except ceasing to be. Even if every natural object corresponds to the concept of its species and is insofar produced perfectly by nature, there is still a more elaborate concept of perfection which involves the object's final cause. And, indeed, there is an epistemological need for it, because without such no one could explain why, for example, a lion with a broken fang or a bald head cannot be called a perfect lion, though, undoubtedly, it is a lion. Now, classic Aristotelian doctrine states that the complete concept of a living thing is to make use of its specific natural potentialities in order to perform well the actions it is made for, and generally speaking, to fit in this way into nature as a whole. Under that condition it is possible to graduate to different standards and stages of perfection according to the final cause of a given animal, which cannot be

²² See Alexander Aichele, 'Was ist physis? Aristoteles' dynamische Bestimmung des Begriffs des natürlichen Gegenstandes, *Physik B', Cahiers de Philosophie de Centre Universitaire Luxembourg*, 9 (2003), 7–19.

achieved by its formal cause because there cannot be any graduation of an object's affiliation with a species.

So, are there perfect individuals of a species in space and time? Since the actualization of an individual's specific potentialities not only depends on its inner state but also on circumstances under which it exists, there cannot be a real individual, being perfect in an absolute sense. However, there may be instances of relative perfection in accordance with the particular circumstances. This allows the given state's differentiation into more or less perfect states according to the criterion of the animal's successful mastering of its natural way of existence.

To put it simply: understanding the Marsilian expression *perfecte formare* as an Aristotelian concept — and so far on this fundamental ontological level there is not any hint to take it in another way — there cannot be any difference of perfection in the case of objects produced by nature, insofar as they are certain objects belonging to a certain species. The only idea of an object in a state of absolute perfection that is still possible, logically, is a conceptual construction according to its final cause without any reality in space and time, which may have quite a bit of epistemological value. Actually, the point seems to be that a best state of a given animal according to its natural constitution under any circumstances is to be judged by its natural concept, involving its formal as well as its final cause. It appears to be this qualified concept of a relatively best individual that Marsilius looks for in the *Defensor pacis* — regardless of whether Aristotle, in his *Politics*, tries to grasp the best form of state in an absolute sense, and therefore purely conceptual, or in a relative sense.²³ Logically, the political order Marsilius prefers, i.e., a republic in the widest sense, must be treated as an individual belonging to a higher class which is mentioned by the organic model. However, on the conceptual ontological level Marsilius argues in a precisely Aristotelian way, and proceeds methodologically in correspondence with Aristotle's exhortation to study the best individual as a guide toward the sought-after concept of *politeia*.²⁴ At the same time, this move marks Marsilius's

²³ See *MPMPP*, p. 34. This relativity on the level of individuals does not endanger absolute perfection on the conceptual level. So, under this condition, there is no conflict with Jeannine Quillet, 'Community, Counsel and Representation', in *Cambridge History* (see Watt, above), pp. 520–72, (pp. 533–35).

²⁴ For the purpose of this essay there is no need to discuss the question as to whether or not Marsilius describes a certain Italian republic, for instance Padua. See *LPP*, pp. 23–38, and J. P. Canning, 'Introduction: Politics, Institutions and Ideas', in *Cambridge History* (see Watt, above), pp. 341–66 (pp. 364–65).

departure from the course of Aristotle's *Politics* since he stresses the physiological point of the analogy of animal and state, advancing to the functions of the governing organ.²⁵

II. The State's Physician

As we have said, Aristotle never uses his physiological teachings, especially those from *De partibus animalium*, to explain the external or internal relation of the soul's government. *Prima facie*, this renouncement seems to be surprising, but as we shall see, he has good reasons to do so.

Firstly, there is no room for a subdivision between the purely instrumental nature of the body and the ruling function of the soul in the *Politics* in accordance with the materiality of the body and its parts and the immateriality of the soul, which is both the formal cause of the whole and the efficient cause of its being alive. Consequently, the heart as the material part of the body is called the mere seat of the soul, as Aristotle puts it in *De partibus animalium*, for example; and there is a well-known discussion about the soul's moving in, which needs not be treated here. To shorten: the heart, taken in itself, remains as a material instrument to generate the blood and, likewise, as the material carrier of power or warmth that serves as the material cause of the living organism, neither as its formal, its efficient, nor its final cause. Secondly, and indeed more fundamentally, according to the structure of Aristotelian thought and disciplines, which the Stoics named logic, physics, and ethics, political or ethical objects could not be treated in the same scientific way as natural objects in the physical or ontological sense, despite the fact that Aristotle calls the *polis* 'natural'.²⁶

However, Marsilius clearly stretches his physiological approach beyond the boundaries of pure analogy, using Aristotelian terms at the same time.²⁷ In order to analyse that nominal or perhaps merely superficial Aristotelianism, I quote the crucial passage of Chapter 15 of the first discourse at full length:

²⁵ See the remarks on Marsilius's concept of nature in *MPMPP*, pp. 54–60 and 128–29.

²⁶ See Manfred Riedel, *Metaphysik und Metapolitik. Studien zu Aristoteles und zur politischen Sprache der neuzeitlichen Philosophie* (Frankfurt a. M.: Suhrkamp, 1975), p. 64.

²⁷ I think this is the phenomenon that Cary J. Nederman calls 'body-politics', which is, emphasizing the organic model's diagnostic role (p. 133), more precise than Gewirth's *reductio ad biologiam*, (pp. 50–52). See Cary J. Nederman, *Community and Consent: The Secular Political Theory of Marsiglio of Padua's Defensor Pacis* (Lanham, MD: Rowman & Littlefield Publishers, 1995) pp. 131–36. Hereafter, citations of this text appear as CC.

This proportion, from which the efficient and determining cause of the parts of the state will appear more fully, we shall undertake to describe following Aristotle in the sixteenth chapter of his treatise *On Animals* and also Galen in a certain book of his called *On the Formation of the Foetus*, together with the more expert of their successors. By a certain principle or moving cause, whether it be the form of the matter or separate from it, or something else having the power to generate the animal and its parts, there is formed first in time and in nature a certain organic part of the animal itself. In this part there is a natural virtue or power, together with some heat as an active principle; and this power and heat have a universal active causality for forming and differentiating each of the other parts of the animal. This first-formed part is the heart, or something analogous to the heart, as Aristotle said in the above-mentioned text, and as is also said by the other more expert philosophers. These men should be believed because of their experience in the field, and we must now assume what they say without proof, since to demonstrate it does not pertain to our present inquiry. Now this first-formed part of the animal is nobler and more perfect in its qualities and dispositions than the other parts of the animal. For in generating it, nature established in it a power and instrument by which the other parts of the animal are formed from suitable matter, and are separated, differentiated, ordered with respect to one another, conserved in their dispositions, and preserved from harm so far as nature allows. Also, lapses from their nature because of illness or other impediment are repaired by the power of this part.

The state appropriately established according to reason must be considered in an analogous manner. For by the soul of the whole body of citizens or of its weightier part, there is first formed or should be formed in that whole body a part which is analogous to the heart. In this part, the soul of the whole body of citizens establishes a certain virtue or form with the active power or authority to establish the other parts of the state. This part is the government; its virtue, universal in causality, is the law; and its active power is the authority to judge, command, and execute sentences concerning civil justice and benefit.²⁸

²⁸ *DPc*, pp. 63–64; ‘Ad quam siquidem describendam proporcionem, ex qua patebit amplius efficiencia et determinacio parcium civitatis, suscipiemus cum Aristotele in 16^o De Animalibus, et a Galieno in suo quodam libro, quem vocavit De Zogonia, cum reliquis quoque magis expertis posteriorum, a principio quodam seu causa movente aliqua, sit illud forma materie aut separata vel alterum quiddam virtutem habens generativam animalis et parcium eius, formari primum tempore atque natura partem quandam organicam animalis ipsius, et in ipsa virtutem seu potenciam naturalem cum calore aliquo, tamquam activo principio, virtutem inquam et calorem universales activa causalitate ad formandum et distinguendum unamquamque reliquarum parcium animalis. Et est pars ista primum formata cor aut cordi proportionalis aliqua, sicut dixit Aristoteles ubi supra, et reliqui philosophorum periciores, quibus credere oportet propter ipsorum experienciam in hoc, et absque probacione nunc supponere, quoniam id demonstrare non est presentis inquisitionis. Hec siquidem pars formata primum nobilior est et perfectior in suis qualitatibus et disposicionibus ceteris partibus animalis. Statuit enim in ea natura generans virtutem et instrumentum, per que partes animalis relique formantur ex

In the following interpretation, I will focus on the differences and functions of the ruling and legislating part, the relation between heart and soul of the body against the auctorial Aristotelian background.

First, how does Marsilius describe the *pars principans*? He starts by recalling Chapter 4 of Book III of *De partibus animalium*, in which Aristotle describes the heart's structure, purpose, and cause.²⁹ Essentially, Marsilius's speculative physiological description contains four points. First, the heart is a receptacle, i.e., its interior is hollow and its walls are watertight. It contains the blood and is divided into three chambers to hold three kinds of blood differing in temperature, purity, and quantity. In addition, all vessels stem from the heart, which is their origin and part of them at the same time.³⁰ Secondly, the heart itself is the source of the blood it contains, producing also its warmth, which then transports it to the parts of the body that are nourished by blood. So, the heart exists for the sake of the nourishment of the body's parts.³¹ Thirdly, the reason why some organisms have a heart, or some analogous part, is that these living entities are animals, i.e., living things that are able to move and feel. Since emotion and sensory perception are types of motion and the heart is the first part of the body that moves, that is, it is the first part that is moved by the soul, the heart appears to be the principle of the nature of blood-containing animals.³² However, this is not possible because only the soul could be a principle such as that. Since the heart is, actually, the first moved part, it transfers the original movement to the parts of the body, *materialiter*. Finally, we have to emphasize particularly, that in the passage of *De partibus animalium*, on which Marsilius

convenienti materia, separantur, distinguuntur, invicem ordinantur, in suis dispositionibus conservantur et a nocumento, quantum natura patitur, preservantur per ipsam; lapse vero a sui natura propter egritudinem aut alterum impedimentum, huius partis virtute reparantur.

Huius autem proportionaliter contemplandum in civitate convenienter instituta secundum rationem. Nam ab anima universitatis civium aut eius valencioris partis formatur aut formari debet in ea pars una primum proporcionata cordi, in qua siquidem virtutem quandam seu formam statuit cum activa potencia seu auctoritate instituendi partes reliquas civitatis. Hec autem pars est principatus, cuius quidem virtus causalitate universalis lex est, et cuius activa potencia est auctoritas iudicandi, precipiendi et exequendi sentencias conferencium et iustorum civilium': *DPb*, I. 15. 5–6.

²⁹ See Aristotle, *Les parties des animaux*, ed. and trans. by Pierre Louis (Paris: Les Belles Lettres, 1993), 667b12–13.

³⁰ See *Les parties des animaux*, 665b33–34.

³¹ See *Les parties des animaux*, 650a2–b13.

³² See *Les parties des animaux*, 666a20–22.

relies, according to his editors, Aristotle does not talk about the rational part of the soul, but only about its moving part and, implicitly, the nourishing one.

Marsilius's reference on this teaching is not very clear. At any rate, it sounds quite different from the original. On the contrary, there is at least one crucial parallel, on which I shall focus. It consists in the fundamental structural point that the heart does not count as a real principle *in sensu stricto*, but as part of the body, albeit the most important one. Actually, this formal point seems to be of special importance to Marsilius, since he only differentiates between a certain principle (*principio quodam*) and the first part. He identifies this principle with a moving cause (*causa movente*) that may be meant as efficient cause. This principle's structure remains indistinct; still, it can be the form of the matter that makes the formed part what it is, meaning its formal cause, or a cause that is separate from this form, or something else which has the necessary generative power. On the other hand, this principle clearly must be identified with nature, which is notoriously used equivocally.

Assuming this identification must be made and since Marsilius evidently stresses the part's coming-to-be, we are able to narrow down the meaning of the relation of 'principle' to nature — either as the efficient cause or as the formal cause of the first part. Again, considering the fact that generation at all is seen as a special kind of movement from an Aristotelian point of view, i.e., substantial change, our principle can be classified as efficient cause, which sets off this special producing movement, with regard to a particular formal cause, a specimen of a certain kind. The formal cause is mentioned by Marsilius implicitly, because it is not an efficient cause's business to prescribe what part has to be first, by nature. This principle, containing both an efficient and a formal aspect, therefore seems to be the soul, which is the principle of motion of every animal and its affiliation to one certain species. The first part, once formed, works in itself as the efficient cause. This is because it contains, by its own nature, an active power (*virtutum seu potenciam naturalem*) and an active principle to realize it, i.e., warmth, which puts in motion the process of the animal's growing right from the start.³³ As a result, there is no need for another cause beside the first part as it owns *causalitas universalis* to build up and differentiate the rest of the parts. It should be noted explicitly that Marsilius does not speak about a certain animal as a whole, which would have to be determined conceptually. Doing so would transgress the range of an efficient cause and

³³ See *Les parties des animaux*, 650a2–8 and 666a23–b1.

touch on the function of formal causality, which would endanger Marsilius's physiological conception of an animal's generation.

Only after having made these purely formal considerations does Marsilius name the first part: the heart or its analogue. Its introduction is quite interesting. Initially, Marsilius refers to the aforementioned passage of Aristotle's *De partibus animalium*, that, as we have seen, does not contain any similar formal reflections except for the primacy of the heart and its structure as a kind of secondary efficient cause of the animal's growing, of which the soul is the actual cause. Next, he refers to some more distant philosophers, who still have not yet been identified. Third, Marsilius repeats an exhortation that is typical of medieval authors of medical studies. It shows a special understanding of the relation between philosophy or physics on the one hand and medicine or theory of medicine on the other, reflecting both the growing self-confidence of medieval physicians, who claim to possess their own kind of truth, and the gradual farewell to Aristotelian anatomy, which lies hidden behind the strict separation of both disciplines. The classical order expects that physicians simply should believe in the results of philosophers' inquiries and not worry about these areas, for example, certain principles, which are treated by philosophy,³⁴ because they have no use for medicine, that *corpus humanum ex parte unde sanatur, & a sanitate remouetur*.³⁵ The same task, i.e., recovery of health, according to the *Defensor pacis*, considers tranquillity being to the state as health is to an animal:

The relation, therefore, of the state and its parts to tranquillity will be seen to be similar to the relation of the animal and its parts to health. [...] Health, moreover, as the more experienced physicists describe it, is the good disposition of the animal whereby each of its parts can perfectly perform the operations belonging to its nature; according to which analogy tranquillity will be the good disposition of the city or state whereby each of its parts will be able perfectly to perform the operations belonging to it in accordance with reason and its establishment.³⁶

³⁴ See Avicenna, p. 6: 'Harum vero rerum quaedam sunt, de quibus medico nihil aliud est agendum, nisi ut apprehendat, seu cognoscat, quid fit, vel earum essentiam apprehensione scientiali: & utrum sint vel non sint, doctori sapientiae physicalis credat. Et earum sunt, de quibus in sua arte ratiocinari debet. Quae ergo earum sunt sicut principia, utrum sint vel non sint, credere debet. Scientiarum nanque particularium principia credita recipiuntur: & in aliis scientiis, quae secundum ordinem sunt ante eas ratiocinantur: & ita sit, donec scientiarum omnium principia ad philosophiam primam, quae metaphysicam nuncupatur, eleventur.'

³⁵ Avicenna, p. 5.

³⁶ *DPc*, p. 9; 'Qualis est igitur comparacio animalis et suarum parcium ad sanitatem, talis videbitur civitatis sive regni et suarum parcium ad tranquillitatem. [...] Sanitas autem, ut aiunt

Then, if there is no tranquillity, the state must be called sick.³⁷ So, Marsilius speaks from a physician's point of view, which, naturally, implies another method, another goal, and another concept of truth instead of those of the philosophers'.³⁸ The latter point may be quite surprising, but the differences between science and art and between the objects they treat compel one to this assumption. It is expressed very pointedly by Pietro d'Abano: 'Philosophi sermo, quam certificatur subtiliter, est veracior, sed medicorum sermo in primis, quam attenditur, est magis manifestus.'³⁹ Even without discussing these different epistemological positions *en detail*, one can say that this difference depends on the different objects and targets philosophy and medicine have: the first tries to reveal the truth about a certain entity, i.e., its essence, which is universal, unchangeable, intelligible, etc. The latter, on the contrary, focuses on materially existing individuals that are to be brought into a certain condition, which must be the best one in relation to its real possibilities and surroundings, as we have shown before. Clearly then, physicians will be interested in the final cause of their objects. Finally, the fact that, at least considering the inquiry of principles, Marsilius works more as physician than philosopher is confirmed by his exclusion of a special proof of the heart, which considers it as principle of a certain kind or as carrier of a certain principle.

III. Marsilius's Physiology of State

Considering this background, it does not seem unreasonable to read Marsilius's 'physiological' passages looking both at Aristotelian ontology and contemporary medical method and hypotheses. After having stated the natural and temporal priority of the first part and its identification with the heart, Marsilius describes its qualities and dispositions.

periciores physicorum describentes ipsam, est bona dispositio animalis, qua potest unaqueque suarum parcium perfecte facere operationes convenientes sue nature; secundum quam siquidem analogiam erit tranquillitas bona dispositio civitatis aut regni, qua poterit unaqueque suarum parcium perfecte operationes convenientes sibi secundum rationem et suam institutionem': *DPb*, I. 2. 3.

³⁷ *CC*, pp. 132–33.

³⁸ See *LPP*, p. 66.

³⁹ Pietro d'Abano, p. 60, col. 2 B, who quotes Avicenna, p. 17: 'Et philosophi quidem sermo, cum subtiliter certificatur, est veracior. Sed medicorum sermo, in primis cum attenditur, est magis manifestus.'

The heart is 'nobler and more perfect' than the other parts, due to its aforementioned feature of working as efficient cause in a material and physiological sense once it has been formed. This causality must be understood in a material way, because the actual process of the animal's growing and differentiation and ordering of its parts into a whole requires a supply of 'convenient matter', which, again, needs special processing. Evidently, the heart, as an organ, is itself a material part of the body that is moved at first and moves until the end of the animal's existence. Therefore, it follows, that there is a fundamental difference between heart and soul: the heart is the first thing moved, transmitting life's power to the other parts of the body, and is part of the body itself; the soul is the very cause of movement or life, which is not part of the body and does not move in itself.⁴⁰ Consequently, the latter must be the animal's unchangeable essence, functioning as its very substance, which is not part of the body, but, indeed, a part of the certain entity, i.e., the one that makes a being this or that entity, that means an individual of a certain species. Therefore, the soul, which is the cause of the *pars principans* as first part, cannot itself be part of the first part.

This has to be considered, if we follow again the Marsilian transfer of the relation of heart and soul to the state:⁴¹

For by the soul of the whole body of citizens or of its weightier part, there is first formed or should be formed in that whole body a part which is analogous to the heart. In this part, the soul of the whole body of citizens establishes a certain virtue or form with the active power or authority to establish the other parts of the state. This part is the government; its virtue, universal in causality, is the law; and its active power is the authority to judge, command, and execute sentences concerning civil justice and benefit. Because of this, Aristotle said in the *Politics*, Book VII, Chapter 6, that this part is 'the most necessary of all' in the state.⁴²

⁴⁰ See Aristoteles, *Über die Seele*, trans. by Horst Seidl, ed. by Wilhelm Biel and Otto Apelt (Hamburg: Meiner, 1995), 411a25–26. For a classic medieval description of the heart's function and its relation to soul, see Alfred of Sarashel, *De motu cordis*, ed. by Clemens Baeumker (Muenster: Aschendorff, 1923), and its summary in Wolfgang Stürner, *Natur und Gesellschaft im Denken des Hoch- und Spätmittelalters: Naturwissenschaftliche Kraftvorstellungen und die Motivierung politischen Handelns in Texten des 12. bis 14. Jahrhunderts* (Stuttgart: Klett, 1975), pp. 57–63.

⁴¹ See the short remarks of Tilmann Struve, *Die Entwicklung der organologischen Staatsauffassung im Mittelalter* (Stuttgart: Hiersemann, 1979), p. 287, who unfortunately does not see any ontological or other problems.

⁴² *DPc*, p. 64; 'Nam ab anima universitatis civium aut eius valencioris partis formatur aut formari debet in ea pars una primum proporcionata cordi, in qua siquidem virtutem quandam seu formam statuit cum activa potencia seu auctoritate instituendi partes reliquas civitatis. Hec

Marsilius's construction of this analogy is quite complicated, since he does not simply identify the totality of the citizens (or its weightier part) with the soul. Rather it is its soul which forms the first part. What does that mean?

Let us, again, first describe the functions of soul and heart of the state. First, the soul forms the first part, i.e., the *pars principans*. Second, the soul is the primary efficient cause of state,⁴³ which is called *legislator*.⁴⁴ Third, since the *legislator* has the same function for the state as nature for the animal,⁴⁵ the *legislator* has to work as formal cause and substance of the state, too.⁴⁶ Fourth, the soul is just able to provide the form of a certain entity, therefore, the *legislator* precisely works as efficient cause of the law, which is at the same time the state's power of life.⁴⁷ Last, on account of the soul's substantive nature, from which follows its function as formal and efficient cause, the *pars principans*, or heart of state, is its substantive form. Both soul and heart work within the form of the law and transmit law's power as its primary efficient cause to the parts of the state by its actuality, i.e., the government, which is the secondary efficient cause of the state.⁴⁸

Despite the obvious question regarding the material description or definition of the soul of the totality of the citizens (its weightier part), which has often been discussed in Averroistic, Rousseauistic, and other terms, there lurks another

autem pars est principatus, cuius quidem virtus causalitate universalis lex est, et cuius activa potencia est auctoritas iudicandi, precipiendi et exequendi sentencias conferencium et iustorum civilium, propter quod dixit Aristoteles 7^o Politice, cap. 6^o, partem hanc esse *omnium* aliarum *necessariissimam* in civitate': *DPb*, I. 15. 6.

⁴³ 'Hanc autem primam (sc. causam effectivam) dicimus legislatorem': *DPb*, I. 15. 4.

⁴⁴ For an account of the political functions of the *legislator*, see *MPMPP*, pp. 167–75, and Nederman, 'Character and Community', pp. 385–87.

⁴⁵ 'Quoniam autem in prioribus monstratum est aliquialiter, monstrandum tamen cercius institutionem et distincionem parcium civitatis ab aliqua movente causa fieri, quam pridem legislatorem diximus; quodque legislator idem has partes statuit, distinguit et separat instar animalis nature, formando scilicet primum seu instituendo in civitate partem unam, quam principantem seu iudicalem diximus': *DPb*, I. 7. 1.

⁴⁶ See *LPP*, p. 65.

⁴⁷ According to these purely formal and functional reflections on the concept of law there is no internal necessity for the justice of laws; see *MPMPP*, pp. 132–36.

⁴⁸ 'Secundariam (sc. causam effectivam) vero quasi instrumentalem seu executivam dicimus principantem per auctoritatem huius a legislatore sibi concessam, secundum formam illi traditam ab eodem, legem videlicet, ecundum quam semper agere ac disponere debet, quantum potest, actus civiles': *DPb*, I. 15. 4.

serious but more formal problem, which seems to force Marsilius to leave the Aristotelian paradigm. Roughly stated, this problem concerns the temporal and natural priority of the *pars principans*, its establishment by the soul, and the ontological status of both. Again, how are we supposed to imagine the soul of a state?

The first crucial point is a certain vagueness concerning the first part's place. Marsilius writes: 'ab anima universitatis civium aut eius valenciore partis formatur aut formari debet *in ea* [my emphasis] pars una primam proporcionata cordi.' What does *in ea* refer to? There are two possibilities: the soul or the totality of the citizens (its weightier part). *In* is a local preposition, answering the question 'where?' — that is, it locates an entity within another one. Now the *pars principans* is the first material part of the state and, at the same time, the first one moved. Clearly then it is not possible that a material part lies within an immaterial being because it could not be at a certain place, but every material thing has to be at a certain place. So, *in ea* must refer to *universitas civium aut eius valenciore partis*, and the *pars principans* must lie in it. If this is so, the question arises, what, actually, is the *universitas civium etc.* If we rule out the idea that it should be a kind of space, which seems to be really absurd, then there are three possibilities left. Either the *universitas civium etc.* is a body, in which the *pars principans* must be formed and located, or it is a place in another body, in which the *pars principans* must be first formed and after that pushed out, like a child out of the mother's womb, or it is an immaterial entity in itself somehow, which brings the *pars principans* into existence. It is easy to see that none of these solutions is really satisfying. The *pars principans* cannot be formed in an actual body because it should be the body's first part. Also, the *pars principans* does not seem to be generated out of and separated from a certain place in another body, since there would then be a substantial difference between the *universitas civium etc.* and this new entity; the new entity being the political community or the state. One would have to deal then with two different entities, consequently with two *partes principantes*, one generating the other. By doing this, the first one had to disappear and dissolve itself into the latter, which then presupposes substantial change of the soul, which is unchangeable. Evidently, the *universitas civium etc.* cannot be an immaterial entity itself either, because then it would have to be soul and could not have a soul. In conclusion, no way appears to be left for solving the problem of the nature of the *universitas civium etc.* in terms of Aristotelian physiology.

Since that way is obstructed, it is advisable to draw from another source. Actually, at this juncture a decision is not difficult since there are only two really

differing physiological doctrines in the Middle Ages: Aristotelianism and Galenism. These two are, to a certain degree, brought together in the work of Avicenna and, in his succession, of Pietro d'Abano.⁴⁹ Since a purely Aristotelian solution is ruled out, and considering the fact that Marsilius was a physician by profession, the obvious thing would be to fall back on the moderate Galenism of medieval theory of medicine. This moderation of Galenism by Avicenna, Pietro, and other authors of lesser importance, as far as it concerns our topic, consists in the distribution of the soul's parts onto different organs while maintaining the heart's primacy. In conclusion, I shall now argue that, against this background, it is possible to save the Marsilian analogy by locating the necessary power of moving and controlling, i.e., the actual secondary efficient cause, and the moving and forming principle of the state, at two different organs: heart and brain.

The assignment of the soul's three parts, the nutritive, the vital, and the rational and practical, to different organs, namely the liver, heart, and brain, is one of the most important doctrines of medieval theory of medicine.⁵⁰ Even if they were 'less true but more evident', they were discovered by Galen's and his predecessors' dissections of human bodies, which were reported and developed during an early period of the Middle Ages.⁵¹ Despite these innovations, the heart remains the prime organ.⁵² This point is quite consistent, because the heart is a necessary condition for the existence of any living thing, insofar as it is its *principium virtutis vitae*, as it is called by Avicenna.⁵³ Here, it must be emphasized, since it turns up in the medical context of Avicenna's *Liber canonis*, that the term *principium* is used in a material or physiological way, because physicians have to believe in the results of the very science of principles, that is, physics and metaphysics or philosophy in general. This confession should be

⁴⁹ See Strohmaier, pp. 179–80.

⁵⁰ See Avicenna, p. 17: 'Membra vero principalia, sunt membra quae primarum virtutum, quae in corpore existunt, quae ad hoc sunt necessariae, ut singulare aut species perdurent, principia habent: secundum vero singularis durabilitatem, sunt tria principia. Cor quidem est principium virtutis vitae, & cerebrum quidem est principium virtutis sentiendi & movendi, & hepar quidem est principium nutriendi.'

⁵¹ See Danielle Jacquart, 'Die scholastische Medizin', in *Die Geschichte* (see Strohmaier, above) pp. 216–59 (pp. 242–47).

⁵² See Pietro d'Abano, p. 59, col. 4 E: 'Veritas est, quod primum membrum, quod in corpore creatur, est cor.'

⁵³ Avicenna, p. 17.

sufficient to hold down eventual confrontations with the current opinion in philosophical psychology, i.e., metaphysics of the soul as substance and cause. If not, there is not any hindrance to concede that the heart, insofar as it is the material principle of vital power, is the seat of the soul as primal efficient cause of life and formal cause of this or that certain living thing, and contains its own higher part, i.e. the rational one, or the organ, where this is located, by nature *in potentia*. This would mean that it will emerge by nature or necessity, if there are no obstacles to this development.

It is not my duty to show at this time why medieval physicians succeeding Galen and his school came to the distribution of the soul's parts to different organs.⁵⁴ I just have to show why the mentioned medical background helps to solve the formal metaphysical problems I tried to analyse paradigmatically by discussing the expression *in ea*.

On the other hand, the whole, insofar as it is something's form, is by nature systematically earlier and, at the same time, often temporarily later than its parts, especially the first part, as both Aristotle and Marsilius state. Even though one may say that the first part contains the whole *in potentia*, it is well known that in the state's case the political community seems to develop quite inorganically. This is so because it is built up from parts that are thoroughly capable of surviving, at least for a certain time, if they are isolated from each other. Evidently, these parts are the families, and from a multitude of them sometimes a political community emerges. But what is a family that has to be an individual of a certain species in itself? Aristotle calls this fundamental part of the state *oikos*, respectively *domus*.⁵⁵ *Eo ipso*, the *domus* is a community that consists of the *paterfamilias*, women, children, and slaves and/or some domestic and working animals. The system of rule in the *domus* is autocracy (*monarchia*), where the *paterfamilias* holds absolute power.⁵⁶ Always supposing he is a good one, which is, even according to Aristotle, in no way necessary by nature — he should reign over his subjects in a threefold way, according to their natural state, which is not completely or perfectly human. He treats the slaves as a despot because they are mere, nonrational tools. He rules women in a political way, since they are free

⁵⁴ See Danielle Gourevitch, 'Wege der Erkenntnis: Medizin in der römischen Welt', in *Die Geschichte* (see Strohmaier, above), pp. 114–50, (pp. 141–44); Strohmaier, pp. 177–81; Jacquart, pp. 234–38; and Teun Tieleman, *Galen and Chrysippus on the Soul. Argument and Refutation in the 'De Placitis' Books II–III* (Leiden: Brill, 1996), pp. 38–65.

⁵⁵ See *Politics*, 1252b12–14.

⁵⁶ See *Politics*, 1255b19.

and rational, but their virtues are to serve, and not to govern; hence women are not equal to the *paterfamilias* and men in general. He treats his children as king, ruling by love and age over the ones who are not completely free and rational beings yet. Since the actual *paterfamilias*'s virtues to rule are not to be developed necessarily and, holding absolute power, he is not under control of any higher instance, his government may be mild or severe or he may rule cruelly with a rod of iron. Any of these variations is possible, as long as there is no highest law, i.e., no justice, which is the form of political communities. Therefore, even the *paterfamilias* must be a deficient human being, because its *telos*, which, in so far as it is its final cause, belongs to its concept, which is to live in a political community under the rule of the law. Now, it would be quite absurd to expel every imperfect human being from mankind. So, it follows, that the substance of man's species has to contain only the potential to live as a citizen under the law in a community of free and equal human beings.⁵⁷ If not, this would mean that if this potential must be realized to apply legitimately the concept 'human being' to two-legged, featherless, and sociable living entities that are able to speak, only male citizens of political communities would be human beings.

These considerations tend to complicate the picture of the straight organic development that Aristotle offers and which Marsilius radicalizes by his use of physiology. The main problem seems to be a quite artificial assumption, which is involved in the Aristotelian story. Necessarily, the political community's parts, namely the communities of houses and villages, which, doubtlessly, are real, existing entities, let alone organic individuals, must be seen as potential parts of the state, as long as there is no actual state, meaning an existing political community, settled by a certain law, which is the individual state's form and its intelligible substance. Clearly, this condition of a quite autonomous individual, capable of surviving, like *oikos* or *kome*, which is on the other hand a potential part of another individual, the political community, does not really fit into Marsilius's physiological concept of part, since, evidently, a part of the body or an organ is not capable of surviving if it is isolated from the body or, rather, if there is no body yet, of which it could be part.

The problem here is a double use of 'part', which is able to refer to a certain phase of continuous development and to a special object.⁵⁸ Since it is a temporal event or a special condition that is required necessarily for the occurrence of

⁵⁷ See Nederman's instructive falling back on Cicero, *CC*, p. 45.

⁵⁸ Clearly, these are not all possibilities to use the concept of part, see the standard book of Peter Simons, *Parts: A Study in Ontology* (Oxford: Oxford University Press, 2000).

another event or condition, which will have floating borders *per se*, it vanishes when the second one occurs, like childhood is a prerequisite for adulthood, although the child is not a part of the adult. It is this first sense of 'part', which must be applied to understand the story of natural development of political communities Aristotle tells in his *Politics*. The existence of individual houses and villages is a necessary condition for the birth of political communities, after which they vanish, becoming elements or actual parts of citizenship, wherein the *paterfamilias* loses absolute power under the law's order. The second sense of 'part' refers to a material object of distinct boundaries that is identifiable in a whole, which is built up of other entities like that. None of these parts is able to function beyond the whole, i.e., as an individual. It seems to be this strict ontological sense of 'part' that is meant by the physiological context of Aristotelian biology, one on which Marsilius depends.

Now we have seen firstly that Marsilius's physiology has to follow the soft Galenism of contemporary theory of medicine on formal grounds in the widest sense, and, secondly, his use of 'part' has to correspond with the second, ontological, sense. Finally, we have to apply these results to the story he tells about the birth of political communities. This can be done through a kind of phenotypic genealogy, which takes a look at the history of the *pars principans* and its formal and efficient cause, that is, the heart and soul of the state. In other words, we have to ask if it is possible to describe the transition of the *paterfamilias* to citizenship in physiological terms of medieval medicine.⁵⁹

As we have seen, a necessary condition of the birth of political communities is a certain perfection of the rational part of man's soul, which lies in its ability to control the other parts. Once it fulfils this function, it takes its position as formal and efficient cause. This is, as Marsilius puts it, done by the *legislator*, which means the soul of the *universitas civium etc.*, which must be identified with nature.⁶⁰ In this connection, nature means human reason, which evidently corresponds to the soul's rational part. It is this that gives order to the whole and controls its adherence to this order. A general rule like that, i.e., the law, exists neither in the community of the house nor in the one of the village, which are both reigned more or less arbitrarily. However, even there — especially while looking on the *domus*, which is of main interest in this case — there must be a

⁵⁹ See *CC*, pp. 41–43.

⁶⁰ See *DPc*, p. 37, with pp. 87–89.

pars principans.⁶¹ This is the despotically ruling *paterfamilias*, who can own, after all, only a subhuman degree of rationality, which will be enough to ensure the surviving of the family on a certain level of existence, which lies below the standards of 'living-well'.⁶² Carrying out this vital or moving function the *paterfamilias* as first or ruling part of the *domus* plays exactly the same role as the *pars principans* of political communities, and it is this role that medieval theory of medicine ascribes to the heart.

As mentioned before, the fundamental difference between both *paterfamilias* and political ruler lies in the accordance of the latter's work with the general rational rule of the law, but this difference involves no substantial change. Indeed, the heart of the house and the heart of the state have the same position and function, which remains temporally and systematically primal. So, the distinction between both forms of community lies rather in the general rationality of the soul of the *universitas civium etc.*, which can in no way specifically be identified with the *paterfamilias*'s soul.⁶³ On the contrary, this ordering business must be carried out by its own part, which is later by time and nature. So, the expression of 'forming' the *pars principans*, actually, is to be taken quite literally or, if one wants to, materially. This sense could be paraphrased as 'taming',⁶⁴ which is the brain's work, according to medical and philosophical medieval writers like Avicenna or, more explicitly, Pietro d'Abano.⁶⁵ Therein seems to be the physiological or even materialistic point of Marsilius's 'analogy'. According to them, the brain has the rational function of ordering and controlling, whereas Aristotle ascribes to it only a cooling function.

⁶¹ See CC, pp. 34–38.

⁶² See Vasoli, pp. 250–51.

⁶³ See P. Renée Baernstein, 'Corporatism and Organicism in Discourse 1 of Marsilius of Padua's *Defensor pacis*', *Journal of Medieval and Early Modern Studies*, 26 (1996), 113–38 (pp. 126–27).

⁶⁴ In my opinion, this may well be a specification of Nederman's 'delicate blending of nature and convention' ('Character and Convention', p. 389).

⁶⁵ See Pietro d' Abano, 119, col. 4 G–H: 'Tribus locis existentibus capite, pectore, & inferiori ventre caput est divinissimum, cum eius inhabitator sit anima. [...] Cerebrum domus quaedam rationalis est animae, de quo & differentia tactum [...] est autem in parte superiori locatum, cum sursum in nobis sit, sursum simpliciter, & in universi. [...] In ipso (sc. cerebro) etiam fundantur virtutes plurimae, & divinae, ut motiva, quae musculis perficitur, & chordis: & sensitiva, quae duplex existit.'

Knowing all too well that these remarks cannot exhaust the wide theme of interactions between classical, Aristotelian ontology in this context, and more advanced natural studies, especially theory of medicine in the Middle Ages, this attempt may give rise to broader investigation into their relation by historians of medieval philosophy.

Theoretical Premises

MARSILIUS AND HOBBS ON RELIGION AND PAPAL POWER: SOME OBSERVATIONS ON SIMILARITIES

Bettina Koch

For years scholars have presumed a clear break between later medieval and early modern political theory, but this assumption has been revised over the last few decades. Scholars like James H. Burns, Antony Black, and Brian Tierney have helped highlight aspects of the continuity between medieval and early modern thought. James H. Burns, for example, states in introduction to the *Cambridge History of Political Thought, 1450–1700*, it is ‘equally clear that, as the differentiation between “early modern” and “late modern” has sharpened, that between “early modern” and “medieval” has softened’.¹ This view, however, is still mostly based on general observations rather than on more specific analysis and calls for further investigations.

Recently, scholars have observed particularly striking similarities between Marsilius of Padua and Thomas Hobbes.² Antony Black points out that for

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¹ James H. Burns, ‘Introduction’, in *The Cambridge History of Political Thought, 1450–1700*, ed. by James H. Burns (Cambridge: Cambridge University Press, 1991), pp. 1–6 (p. 2). Cary J. Nederman, ‘Property and Protest: Political Theory and Subjective Rights in Fourteenth-Century England’, *The Review of Politics*, 58 (1996), 323–44 (p. 323), speaks in this context of a ‘demolition of the once-impenetrable barrier between the medieval and early modern periods’.

² See in particular Conal Condren, *Thomas Hobbes* (New York: Twayne, 2000), pp. 139–142. Patricia Springborg, ‘Thomas Hobbes and Cardinal Bellarmine: Leviathan and “The Ghost of the Roman Empire”’, *History of Political Thought*, 16 (1995), 503–31 (p. 513), argues,

Marsilius 'one does not find another such earth-shaking yet well-tuned civil philosophy until Hobbes, who in fact shared much of Marsiglio's outlook'.³ The similarities focus on one of the core concepts of Marsilius's and Hobbes's political writings: the status of religion and papal power. Though neither theorist exactly argues for the separation of state and church, Marsilius's and Hobbes's main concern is the exclusion of the Roman Church from all worldly influence in the commonwealth in order to eliminate coexisting and competing governments and jurisdictions. Conflicting governments and jurisdictions according to Marsilius and Hobbes are a major cause of unrest and even the decline of the political community.

It is not the intention of this essay to transform Marsilius into an early modern political thinker, but rather to show that Hobbes, who takes up well-known topics and arguments from the fourteenth-century conflict between the pope and the emperor, must be viewed in a new light. Moreover, by investigating the similarities in Marsilius's and Hobbes's view on religion and papal power, it is possible to reveal if and in which way their arguments on these aspect will underpin the view of continuity between medieval and early modern political theory. The purpose of this essay then is to underscore some of these similarities — without ignoring the differences.⁴ It is not, however, the intention of this study to demonstrate a direct or indirect dependence between Marsilius and Hobbes, although the existence of early modern translations of Marsilius's *Defensor* in vernacular languages does argue for the assumption of an acquaintance with Marsilius's thoughts in the early modern period.⁵

although Hobbes criticizes and tries to defeat the scholasticism of his time, he nevertheless makes use of scholastic arguments of an earlier epoch.

³ Antony Black, *Guilds and Society in European Political Thought from the Twelfth Century to the Present* (Ithaca: Cornell University Press, 1984), p. 86.

⁴ For a more detailed analysis see Bettina Koch, *Zur Dis-/Kontinuität mittelalterlichen politischen Denkens in der neuzeitlichen politischen Theorie: Marsilius von Padua, Johannes Althusius und Thomas Hobbes im Vergleich*, Beiträge zur Politischen Wissenschaft, 137 (Berlin: Duncker & Humblot, 2005).

⁵ Marsilius von Padua, *Ain kurtzer Auszug des treffenlichen Wercks und Fridschirmbouchs Marsilij von Padua: Darin der Kayser und Baebste gewalt, (nit on sondere frucht der Theologen, Rechtsgelehrten, ...) gehandelt wirdt. Ann ... Kayser Ludwigen den IIII. ... vor zwayhundert Jaren ausgangen*, durch M. Marxen Mueller von Westendorff ... verteutscht (Neuburg an der Thunaw: Kilian, 1545). Ten years earlier Thomas Cromwell instructed William Marshall to prepare an English translation of the *Defensor*. In this 'translation', however, Marshall did not only translate the text into English, but he also brought Marsilius's ideas into line with the actual

At the end of Chapter 12, 'On Religion', in Thomas Hobbes's *Leviathan* one finds one of Hobbes's attacks against the Roman Church.⁶ If one puts aside some aspects peculiar to the age of the Reformation, Hobbes reveals a position that can be described as Marsilian. Hobbes starts his accusation with the general statement that the Church of Rome ought to declare only doctrines necessary for salvation, since they are basically of the pope's advantage. An almost similar statement can be found in Marsilius's *Defensor pacis*. At the beginning of Discourse II of the *Defensor*, Marsilius declares that priests and bishops have already corrupted the souls of most simple Christian believers by their wrong teachings. Although their teachings are invalid, they draw from them 'conclusions which helped them to impose their unjust despotism upon Christian believers'.⁷

If one considers Hobbes's long list of charges against the Roman Church, it is notable how closely they reflect themes that were also causes of conflict in the late medieval struggle between the pope and the emperor. Some of these aspects are particularly meaningful for his position on papal power.

First, Hobbes opposes the belief that 'a king hath not his authority from Christ unless a bishop crown him'. Secondly, Hobbes disagrees that a priestly king would not be allowed to marry and that the authority to judge if someone

political situation and needs. See for this: Conal Condren, *Status and Appraisal of Classic Texts: An Essay on Political Theory, Its Inheritance, and the History of Ideas* (Princeton: Princeton University Press, 1985), p. 264. For the background: John Guy, 'The Henrican Age', in *The Varieties of British Political Thought, 1500–1800*, ed. by J. G. A. Pocock (Cambridge: Cambridge University Press, 1996), pp. 13–46 (p. 28); Shelley Lockwood, 'Marsilius of Padua and the Case the Royal Ecclesiastical Supremacy' (The Alexander Prize Essay), *Transactions of the Royal Historical Society*, ser. 6, no. 1 (1991), 89–119 (p. 95).

⁶ Thomas Hobbes, *Leviathan*, ed. by Richard Tuck, rev. Student Edition (Cambridge: Cambridge University Press, 1996), Chapter 12, p. 85–87.

⁷ Marsilius of Padua, *Defensor pacis*, trans. by Alan Gewirth, with a new Afterword and Bibliography by Cary J. Nederman (New York: Columbia University Press, 2001), II. 1. 1 (all English quotations are taken from this text and hereafter appear as *DPc* along with discourse, chapter, section, and/or page number); 'Hii namque sacerdotes sui sermonibus et scripturis quibusdam sentencias divinas et humanas actuum humanorum, tam monasticorum quam civilium, involverunt implicatione varia et explicari laboriosa quam multum; ex tali sentenciarum involucro postmodum inferentes, licet indebite, sensus aliquos, quibus suam iniustam despociam induxerunt super Christi fideles sua simplicitate credentes': Marsilius von Padua, *Defensor pacis*, ed. by Richard Scholz, *Fontes Iuris Germanici Antiqui*, 2 vols (Hannover: Hahnsche Buchhandlung, 1932/33), II. 1. 1 (hereafter, citations of this text appear as *DPb* along with discourse, chapter, and section number).

is born in lawful marriage belongs to Rome. Thirdly, Hobbes denies the papal position that 'subjects may be freed from their allegiance if by the court of Rome the king be judged a heretic'. Fourthly, Hobbes cannot accept that clergymen should be exempt from worldly jurisdiction of the king. Finally, he rejects the papal claim that the right to depose a king belongs to the pope. In the fourth part of *Leviathan*, called 'Of the Kingdome of Darknesse', Hobbes reiterates these accusations.

In this essay we will demonstrate, by following Hobbes's catalogue of accusations, how Hobbes's antipapal argument is in keeping with the political arguments of Marsilius of Padua's *Defensor pacis*, a work completed in the first half of the fourteenth century. The comparison has consequences for the status of religion in both Marsilius's and Hobbes's theories. Moreover, it provides some answers concerning the question of continuity and change between late medieval and early modern political thought.

The Authority of the King

By rejecting the papal position that a king only has authority from Christ if a bishop has crowned him, Thomas Hobbes addresses one of the chief causes of conflict between the Roman emperor and the Curia in the later Middle Ages. Hilary Seton Offler calls the conflict between Louis IV of Bavaria (also known as Ludwig the Bavarian) and Pope John XXII 'the last struggle', and Hobbes's polemic against the Church of Rome may be called a distant echo of this struggle. Louis of Bavaria was condemned and excommunicated by the Pope for being elected as king of the Romans without papal approval. Although, from the viewpoint of the Pope, the empire was vacant, Louis continued to administer the realm, and finally was accused of collaborating with 'rebels against the Church'.⁸

As it is well known, the key cause of their controversies was a clash over worldly interests in Italy. This controversy, however, was settled not only by the sword, but also by the pen. Characteristic of fourteenth-century polemical treatises is the belief that such quarrels could be solved without a clear distinction between the papal and the imperial sphere of influence in geographical terms.

⁸ For the conflict between Louis IV of Bavaria and John XXII that can be considered as the historical background of Marsilius's theory, see Hilary Seton Offler, 'Empire and Papacy: The Last Struggle', *Transactions of the Royal Historical Society*, ser. 5, no. 6 (1956), 21–47.

For Hobbes the break between these two spheres is already manifest. Therefore, outside the pope's own realm, Hobbes ascribes to him the position of a 'schoolmaster' and not the position of a 'master of the family'.⁹ Hobbes considers the pope a (secular) sovereign of an independent commonwealth who has sovereign rights in his own realm but who has no rights in any other foreign commonwealth.

By contrast, since the pope cannot be considered an external power, the medieval antipapal argument leads to the exclusion of the Roman pontiff from all worldly power. This is particularly true for the political theory of Marsilius of Padua, who not only draws a very clear distinction between the priestly and worldly offices, but who also develops a theory in which the Church finds itself finally integrated into the (secular) commonwealth.

Marsilius takes it for granted that those who defend the commonwealth with the sword deserve obedience in coercive jurisdiction — and these are not the bishops or priests.¹⁰ One finds Marsilius's motive to exclude all priests from worldly business not only in his attempt to diminish the papal claim to worldly influence, but also in his general theory, which is based on a division of functions. In a small community, like a village, the number of inhabitants is not sufficient for filling all necessary functions. If one person exercises two or even more different and conflicting offices, Marsilius sees a conflict of interests occurring. Marsilius gives the example of a father who is at the same time the village elder. If one of his two sons has killed his other son, he is forced to punish his remaining son. If committing murder is to be punished by death, then the father, who as elder is also judge, is conflicted, desiring to forgive his remaining son, since otherwise he would not just lose one son but both. But if he forgives his son, he, at the same time, violates the community's standard of justice. Therefore, Marsilius sees overlapping authorities as a cause for injustice. Consequently, Marsilius would not allow overlapping authorities in perfect communities.¹¹ The same rule applies in regard to Marsilius's distinction between

⁹ See *Leviathan*, Chapter 42, p. 379: 'And therefore the second Conclusion, concerning the best form of Government of the Church, is nothing to the question of the Popes Power without his own Dominions: For in all other Common-wealths his Power (if hee have any at all) is that of a Schoolmaster onely, and not of the Master of the Family.'

¹⁰ See *DPb*, II, 5, 5: 'Nam domini, quibus in iurisdiccione coactiva obedire tenemur, sunt qui per armatum potentiam defendere debent patriam, quod nullo modo convenit episcopo aut presbytero.'

¹¹ *DPb*, I, 3, 4.

the ruling and the priestly office. Marsilius states at the beginning of Discourse II of the *Defensor pacis* that the Roman bishops and all other priests have to be excluded from all property rights and worldly power.¹²

Although Marsilius's and Hobbes's scheme of the supreme ruling office could not be more different,¹³ they both emphasize that the Roman Church has to be excluded from all influence on the supreme office. In Marsilius's theory, the *pars principans* is appointed by general consent of the *universitas civium* or the *valentior pars*.¹⁴ According to Marsilius, the officeholder of the supreme ruling function should be appointed by election.¹⁵ Further ceremonies like religious ones Marsilius does not consider as necessary. Only the election is needed to allow the ruler to exercise his office rightfully.

If one disregards Marsilius's restrictions of the ruling power, which are not found in Hobbes's theory, then one finds almost the same principle employed in Hobbes's thought.¹⁶ Significantly, one even finds in the *Leviathan* a rejection of the two swords theory.¹⁷ Gelasius first developed this theory in a letter to Anastasius. This theory had reached the peak of its career in the bull *Unam sanctam* by Boniface VIII.¹⁸ In the late Middle Ages the two sword theory became a target of all antipapal theory. In the *Defensor pacis* Marsilius refers at

¹² *DPb*, II. I. I.

¹³ Although Hobbes's view on the ruling office is by no means in keeping with Marsilius's, Hobbes's position corresponds very well to the image of the ruler in William Marshall's English adaptation of the *Defensor pacis*. In Marshall's version of the *Defensor* all mechanisms to rebuke or to depose the king are missed. Moreover, Marshall has removed all references to election and to the General Council. See Lockwood, pp. 100, 108.

¹⁴ *DPb*, I. 8. I.

¹⁵ *DPb*, I. 15. 2.

¹⁶ *Leviathan*, Chapter 17, p. 120.

¹⁷ See *Leviathan*, Chapter 44, p. 428–29: 'As for some other texts, to prove the Popes Power over civill Soveraignes (beside those of *Bellarmino*;) as that the two Swords that Christ and his Apostles had among them, were the Spirituall and the Temporall Sword, which they say St. Peter had given him by Christ: And that of the two Luminaries, the greater signifies the Pope, and the lesser the King; One might as well inferre out of the first verse of the Bible, that by Heaven is meant the Pope, and by Earth the King: Which is not arguing from Scripture, but a wanton insulting over Princes, *which* came into fashion after the time the Popes were growne so secure of their greatnesse, as to contemne all Christian Kings.'

¹⁸ See for Gelasius and the career of the two swords theory, I. S. Robinson, 'Church and Papacy', in *The Cambridge History of Medieval Political Thought*, c. 359–c. 1450, ed. by James H. Burns (Cambridge: Cambridge University Press, 1988), 252–305 (pp. 300–05).

least twice to the famous bull of Boniface rejecting the papal claim of *plenitudo potestatis*.¹⁹

Although Hobbes's repudiation of all papal influence on the supreme ruling office is in keeping with Marsilius's theory, Hobbes and Marsilius disagree concerning the image of the ruler. Though Marsilius states the possibility that the *pars principans* could also receive his legitimation from God,²⁰ he does not draw the conclusion that a divine legitimation would provide the ruler with a divine or theocratic image. Unlike other medieval authors, Marsilius never considers the ruler as the first priest.²¹ Neither does he make use of the central idea of the traditional medieval Roman law that considers the king as *vicarius Dei*. Bracton, for example, describes the king as 'the vicar of God and his minister on earth'.²² It is not surprising that Marsilius does not rely on this legal tradition. First, Marsilius's legal knowledge is very limited. Secondly, and perhaps of more importance, the theocratic idea of rulership would not fit Marsilius's general theory, which is based on the people's consent.

Although with a Reformation twist regarding theocratic rulership, Hobbes's theory shows a much more 'medieval touch' than Marsilius's concept. Contrary to Marsilius, at least for the Christian commonwealth, Hobbes accepts the idea of a covenant with God and puts his sovereign into one line with Abraham and Moses.²³

From the Old Testament he adopts the idea that 'whosoever had the Sovereignty of the Common-wealth amongst the Jews, the same had also the Supreme Authority in matter of Gods externall worship; and represented Gods Person'.²⁴ Until the second arrival of Christ, whose office after his arrival will be that of the sovereign, Christ has commanded that all Christian believers should obey the person who is sitting on Moses' seat.²⁵ Though he does not pronounce it explicitly, Hobbes understands the sovereign as the representative of Christ

¹⁹ *DPb*, I. 9. 10; *DPb*, II. 20. 8.

²⁰ *DPb*, I. 9. 2.

²¹ For this idea, see Joseph Canning, *A History of Medieval Political Thought, 300–1450* (London: Routledge, 1996), pp. 25–28.

²² See Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology*, with a new Preface by William Chester Jordan (Princeton: Princeton University Press, 1997), p. 150.

²³ *Leviathan*, Chapter 40, pp. 322–24.

²⁴ *Leviathan*, Chapter 40, p. 331.

²⁵ *Leviathan*, Chapter 41, p. 355.

until the Second Coming. Hence, Hobbes denies the papal assertion that ‘a king hath not his authority from Christ unless a bishop crown him’.²⁶ Since Hobbes’s Christian sovereign already is the representative of God in the tradition of Abraham and Moses, he already has the authority to fulfil this office until Christ returns. Consequently, the sovereign does not need any further ceremony like the coronation by a bishop to receive his full power and the grace of God. Concerning this matter, Marsilius’s theory is much more secular than Hobbes’s concept.

The Priestly King’s (Lawful) Marriage

The question of whether a priest is allowed to marry cannot be considered by Hobbes as simply a theological problem because he understands the sovereign to be both a secular ruler and the first priest.²⁷ It is therefore a political problem. Nevertheless, Hobbes’s argument against the prohibition of marriage for priests is not only directed at the prohibition of the marriage of priestly kings, but priests in general. In his polemics against the Roman Church he compares the Church, as a representative of the kingdom of darkness, with the fairies.²⁸ Concerning priestly marriage he concludes, since fairies do not marry, although ‘amongst them [are] *Incubi*, that have copulation with flesh and blood. The *Priests* also marry not’.²⁹

Hobbes, however, does argue there are some advantages — and not only for the Roman pontiff — arising out of priestly celibacy. He agrees with St Paul, who preferred the celibacy of priests during periods of persecution, since priests could flee much easier when forced if they did not have to care for a family. But this is the only advantage to celibacy Hobbes sees. He disputes the notion that marriage is unclean. Hobbes opposes the account of the Church’s view that marriage should not be allowed to servants of the temple. If this were the case, all marriage would be unclean, if not even a sin.³⁰ Furthermore, ‘[i]f because it

²⁶ See also *Leviathan*, Chapter 44, p. 420.

²⁷ See *Leviathan*, Chapter 42, p. 373: ‘Seeing then in every Christian Common-wealth, the Civill Sovereign is the Supreme Pastor.’

²⁸ See for Hobbes’s fairies, A. P. Martinich, *The Two Gods of Leviathan: Thomas Hobbes on Religion and Politics* (Cambridge: Cambridge University Press, 1992), p. 331.

²⁹ *Leviathan*, Chapter 47, p. 481.

³⁰ *Leviathan*, Chapter 46, p. 469–70.

is a thing too impure, and unclean for a man consecrated to God; much more should other naturall, necessary, and daily works which all men doe, render men unworthy to bee Priests, because they are more unclean'.³¹

Hobbes doubts that these arguments are the main reasons for the Roman Church to insist on celibacy. Rather, he believes true reason for celibacy is that the later popes and priests sought to make themselves into a privileged clergy and thus the chief heirs to the kingdom of God.³²

Hobbes's real reason for disagreeing with the papal position on celibacy involves political power. He sees the pope's disapproval of priestly marriage as an attempt to safeguard the power of the pope over all Christian kings. Priestly kings, who are not allowed to marry, will not be able to pass on their realm to their heirs. If a king is not a priest, the pope asserts all papal power over the king and his people.³³ As long as a king belongs to a ruling dynasty, he is in a dilemma. If a king considers himself a priest, the existence of a ruling dynasty would be in danger, since the king would not be allowed to marry. If the king is not a priest, the pope would claim power over him. As a consequence, the king would no longer have sovereignty. Therefore, Hobbes must reject the papal assertion that priestly kings *cannot* marry. Hobbes's chief argument against the papal claim is based on his doubt that marriage has to be understood as a sacrament, since the sacramental status of marriage 'giveth to the Clergy the Judging of the lawfulnessse of Marriages; and thereby, of what Children are Legitimate; and consequently, of the Right of Succession to haereditary Kingdomes'.³⁴

Contrary to Hobbes, the problem of a priestly king's marriage does not appear in Marsilius's theory. Since Marsilius excludes the possibility of a priestly king, he has no reason to address this topic. Nevertheless, one finds some

³¹ *Leviathan*, Chapter 46, p. 470.

³² See *Leviathan*, Chapter 46, p. 470: 'but upon the designe of the Popes, and Priests of aftertimes, to make themselves the Clergy, that is to say, sole Heirs of the Kingdome of God in this world; to which it was necessary to take from them the use of Marriage, because our Saviour saith, that at the coming of his Kingdome the Children of God *shall neither Marry, nor bee given Marriage, but shall bee as the Angels in heaven*; that is to say, Spirituall.'

³³ See *Leviathan*, Chapter 57, p. 477: 'Sixtly, the Deniall of Marriage to Priests, serveth to assure this Power of the Pope over Kings. For if a King be a Priest, he cannot Marry, and transmit his Kingdome to his Posterity; If he be not a Priest then the Pope pretendeth his Authority Ecclesiasticall over him, and over his people.'

³⁴ *Leviathan*, Chapter 57, p. 477.

statements in his writings related to this matter. Although Marsilius is relatively silent in the *Defensor pacis* concerning marriage, he does take a stand on the problem. Marsilius addresses the points of whether priestly marriage is in accordance with divine law and who would have the authority to decide if a marriage should be allowed in regard to certain degrees of relationship.

Marsilius does not find any reason in divine law that prohibits priests to marry, as long as they do not have more than one wife.³⁵ Marsilius proves this with reference to I Timothy 3.³⁶ Regarding the second aspect, Marsilius refers to the faithful human legislator, the General Council, or the ruler by its authority.³⁷ Marsilius concludes his discussion by stating that the decision about a lawful marriage does not belong to the Roman bishop.³⁸ Although he addresses these problems only twice in the *Defensor pacis*, he nevertheless considers them of particular importance. This becomes obvious in the *Defensor pacis* if one turns to Discourse III. The relatively short Discourse III of the *Defensor* — it contains just twelve pages in the Scholz edition — Marsilius considers as a kind of summary of the main theses of the first two parts of the book. Significantly, the two very brief sections in Discourse II concerning marriage also appear in the third part of the *Defensor pacis*.³⁹

The importance Marsilius ascribes to these problems becomes obvious if one turns to his later work *Defensor minor*. Here, Marsilius discusses these questions exhaustively. Unlike during the earlier period of the *Defensor pacis*, these topics were now of political interest because of Louis of Bavaria, Marsilius's patron. For political reasons, Louis had an interest in having Margaret Maultasch marry his son Ludwig of Brandenburg. Since Louis of Bavaria's grandfather and Margaret's grandmother were siblings, the question of degrees of relationship that would allow or prohibit marriage was no longer a problem of divine law only, but also of political relevance. Marsilius tries to solve this problem in the *Defensor minor*.⁴⁰

³⁵ *DPb*, II. 8. 9.

³⁶ See II Timothy 3. 2 and 12: 'Now a bishop must be above reproach, married only once, temperate, sensible, respectable, hospitable, an apt teacher [...]. Let deacons be married only once, and let them manage their children and their households well.' Scripture quotations are taken from the New Revised Standard Version Bible (Oxford: Oxford University Press, 1999).

³⁷ *DPb*, II. 21. 8.

³⁸ *DPb*, II. 21. 8.

³⁹ *DPb*, III. 2. 19; *DPb*, III. 3. 36.

⁴⁰ For the background, see Cary J. Nederman's Introduction to *Defensor minor and De translatione Imperii*, ed. by Cary J. Nederman, trans. by Cary J. Nederman and Fiona Watson

On account of political necessity Marsilius has obviously changed his mind. He no longer considers degrees of relationship as an impediment to marriage. In the *Defensor minor* Marsilius emphasizes that although a marriage up to a certain degree of blood relation would be considered illicit in the Old Testament, a restriction of marriage for blood relation reasons does not apply to Christians, since the New Testament does not include such restrictions.⁴¹

Furthermore, as Hobbes will do more than three hundred years later, Marsilius doubts the sacramental status of marriage. He considers marriage not as a sacrament, but as a merely civil ceremony. This view also includes the opinion that wedlock between Christians and *infideles* should not be restricted either.⁴² Marsilius comes to this conclusion after examining marriage from its origin and in different contexts. He considers a relation between male and female, usually called marriage, a natural relation. Since the human species also lives by art and reason, certain rules do exist. These rules of human and divine origin include prohibitions and permissions.⁴³ Marsilius raises the question 'whether there is any reason on account of which a male and female of the human species who are said to be in wedlock [...] cannot be joined together in such marriage, and by whose authority this can be impeded'.⁴⁴

After stating the civil status of marriage, Marsilius argues with Augustine that 'prohibition of entrance into marriage between blood relatives pertains to the authority of the human legislator or its supreme governor, namely, the Roman ruler'.⁴⁵ Marsilius draws in the *Defensor minor* the conclusion that this right

(Cambridge: Cambridge University Press, 1993), pp. ix–xxiii (p. xvii). Hereafter, citations of this text appear as *DM* along with chapter and section number.

⁴¹ Marsile de Padoue, *Oeuvres mineures*, ed. by Colette Jeudy and Jeannine Quillet (Paris: Editions CNRS, 1979), 16. 2. Hereafter citations of this text appear as *OM* along with chapter and section number. English quotations of the *Defensor minor* are taken from *DM*.

⁴² *DM*, 15. 9–10. See also Cary J. Nederman, *Worlds of Difference: European Discourses of Toleration, c. 1100–c. 1550* (University Park: Pennsylvania State University Press, 2000), p. 81. See also Cary J. Nederman, 'Toleration and Community: A Medieval Functionalist Argument for Religious Toleration', *Journal of Politics*, 56 (1994), 901–18 (pp. 912–14).

⁴³ *OM*, 18. 2.

⁴⁴ *DM*, 13. 1; 'utrum masculus et femella in humana specie vocati coniuges, seu vir et uxor [...] possintne tales matrimonio combinari propter causas aliquas, et per auctoritatem alicuius impedi?' *OM*, 13. 1.

⁴⁵ *DM*, 16. 2; 'videlicet quod talis prohibitio matrimonii inter consanguineos fieri habeat auctoritate legislatoris humani, aut eius principantis supremi, principis scilicet Romanorum': *OM*, 16. 2.

belongs to the human legislator or to the Roman ruler. Hobbes follows Marsilius in this position, since his theory gives the right to decide about licit marriage to the sovereign only.

Marsilius's explanations in the *Defensor pacis* where he ascribes the right to decide about lawful marriage to the faithful human legislator or the General Council reveal yet another secular turn in the *Defensor minor*.

The Heretic King?

The papal entitlement to exempt subjects 'from their allegiance if by the court of Rome the king be judged a heretic' addresses several aspects that are not in keeping with Marsilius's and Hobbes's theories. First, it implies that the pope has the right to decide if the ruler is a heretic. Secondly, the right to judge the ruler infers the right to excommunicate him as well. The consequence, if this would be a licit entitlement, would be an intervention into both the spiritual and the civil status of the ruler, since excommunication expels a person from the community of the faithful and suspends his or her civil rights.⁴⁶

Although Marsilius is certain that a wrongly pronounced excommunication has no influence on the eternal status of the excommunicated, the harm in this world remains. Therefore, Marsilius does not consider it advisable to leave the right of excommunication to the Roman pontiff or an ecclesiastical committee.⁴⁷ Since the general right to excommunicate also includes the right to excommunicate the ruler, every excommunication would be an intervention into the secular order of the commonwealth.⁴⁸ Finally, Marsilius considers the power to excommunicate the Church's most powerful weapon to claim secular power.⁴⁹ In his view, this claim offends God and is harmful to the commonwealth.⁵⁰

In the *Defensor pacis* at least, Marsilius leaves no doubt that excommunication could have civil consequences for the excommunicated citizen or ruler. But since it is not the responsibility of the pope, he has to determine whose responsibility it is. In the *Defensor pacis*, Marsilius concludes this right belongs to the General

⁴⁶ *DPb*, II. 6. 11–12.

⁴⁷ *DPb*, II. 6. 12.

⁴⁸ *DPb*, II. 6. 13.

⁴⁹ *DPb*, II. 26. 8.

⁵⁰ *DPb*, II. 23. 19; *DPb*, II. 26. 12.

Council as representative of the faithful human legislator.⁵¹ And since the Holy Spirit presides over the General Council, it cannot fail.⁵²

For Marsilius, however, even in the *Defensor pacis*, the declaration of the council that the ruler or any other citizen has violated divine law must not have any civil consequences. In this world only deeds forbidden by human law are to be punished. The decision, if parts of divine law should be provided with coercive power too, belongs to the (faithful) human legislator. Only if the legislator decides that revealed divine law will be provided with the coercive authority of human law, a heretic can be punished for his or her heresy in this world.⁵³

While he leaves the final judgement about heresy in the *Defensor pacis* open or unresolved, Marsilius states it more precisely in the *Defensor minor*. In the *Defensor minor* Marsilius declares a violation of divine law should be of no consequence for the civil status of a citizen. Deeds against divine law should only be punished in the future world.⁵⁴ This, however, does not repeal the right of the Church, represented by the General Council, to exclude a heretic from the sacraments.

Hobbes's position corresponds with Marsilius's later view. Hobbes starts his discussion more or less at the point where Marsilius ends. Viewed from its beginning, Hobbes describes excommunication as an internal matter of the Church. It concerns just the exclusion from the community of worship without any civil consequences.⁵⁵ Furthermore, excommunication does not signify a punishment, but only the announcement of a punishment in the future world.⁵⁶ As long as the sovereign is not a Christian, the right to excommunicate or remove him does not belong to priests, but to the whole community.⁵⁷ Regardless, excommunication remains without any civil consequences for the punished.

The only justification for excommunication that Hobbes acknowledges is the violation of the sentence 'Jesus is the Christ'. This means that the

⁵¹ *DPb*, II. 28. 8; *DPb*, II. 21. 8.

⁵² *DPb*, II. 21. 9.

⁵³ *DPb*, II. 10. 3.

⁵⁴ *OM*, 15. 6.

⁵⁵ *Leviathan*, Chapter 42, p. 349.

⁵⁶ *Leviathan*, Chapter 42, p. 388.

⁵⁷ *Leviathan*, Chapter 42, p. 348.

excommunicated has taught doctrines considered heretical to the Church.⁵⁸ In addition, the believer who violated the doctrine must be a member of the community that would excommunicate him or her. From this principle Hobbes draws the conclusion that no church has the right to excommunicate another church or any of its members. Hobbes regards the excommunication of one church by another ‘not Discipline, nor an act of Authority, but Schisme, and Dissolution of charity’.⁵⁹

Hobbes, however, goes even a step further: a Christian who obeys the laws of his sovereign and believes in the sentence ‘Jesus is the Christ’ cannot be excommunicated. It is impossible, he argues, to excommunicate a non-Christian, since someone who does not believe in the sentence ‘Jesus is the Christ’ is not a Christian anyway. Moral reasons to exclude a believer from the sacraments would be the only purpose for excommunication if human law also forbids these deeds.⁶⁰ Hence, all excommunication that should be effective needs the support of the civil sovereign. Therefore, excommunication can only be considered a matter of domestic policy.⁶¹ Hobbes concluded, and this puts his position in agreement with Marsilius’s argument of the *Defensor pacis*, ‘[i]t is he also that giveth strength to Excommunications; which but for such Laws and Punishments, as may humble obstinate Libertines, and reduce them to union with the Rest of the Church, would bee contemned.’⁶²

For the same reason Hobbes also objects to the pope’s claim to possess the right to excommunicate rulers who are not under the civil government of the pope. Hobbes concludes, ‘the Spirituall Power of the *Pope* (without the bounds of his own Civill Dominion) consisteth onely in the Fear that Seduced people stand in, of their *Excommunication;* upon hearing of false Miracles, false Traditions, and false Interpretations of the Scripture.’⁶³

If one summarizes both positions, one comes to the following conclusion: In Hobbes’s theory there is no possibility of a heretic king, since the ruler himself has the authority to judge about heresies — at least if the punishment should be of any consequence in this world. Furthermore, Hobbes considers the pope as

⁵⁸ *Leviathan*, Chapter 42, p. 351.

⁵⁹ *Leviathan*, Chapter 42, p. 352.

⁶⁰ *Leviathan*, Chapter 42, p. 353.

⁶¹ *Leviathan*, Chapter 42, p. 353.

⁶² *Leviathan*, Chapter 42, p. 378.

⁶³ *Leviathan*, Chapter 47, p. 482.

an exterritorial sovereign, who has jurisdiction only in his own dominium, and therefore is not allowed to judge members of other commonwealths or churches.

Unlike Hobbes, Marsilius does not exclude the pope. Nevertheless, the Roman bishop does not play any or even a minor role concerning excommunication. In the *Defensor pacis* the power to judge about heresies is left to the faithful human legislator or to its representative, the General Council. The pope presides at the council. Only if the human legislator decides to put heresy under human law's punishment can the sentence of the council have consequences. Otherwise, heresies are of no civil consequence. This is in keeping with Hobbes's theory that the right to judge about heresies belongs to the sovereign. One main difference between Marsilius's and Hobbes's theory remains. Marsilius draws a clear distinction between those who have the right to judge heresies, and the one, the ruler, who has to exercise the council's judgement. In Hobbes's theory, both the pronouncement of the judgement and the exercise of it belong to the sovereign — if heresy is even a punishable deed.

The Right to Depose a King

From the perspective of both theories, it is consistent to object to the papal assertion of the right to depose a king, whether he is considered a heretic or for any other reason. Although Marsilius and Hobbes agree about this conclusion, their motivations are grounded in quite different settings.

Marsilius follows this principle: Those who have to bear the consequences of a decision have also the right to change their choice. Hence, only those who have the right to appoint the ruler possess the right to rebuke or to depose him. Since the ruler is neither above the law nor is he the law, he has — like all other citizens — to abide by the laws. If the ruler fails in fulfilling his function or if he transgresses the law that has been established by the agreement of all citizens (i.e., the *universitas civium* or the *valentior pars*), the citizens are committed to depose or to rebuke the ruler.⁶⁴ For the reason that frequent changes of the ruling function might destabilize the commonwealth and jeopardize the reputation of the ruling office, Marsilius recommends that citizens not use this right too often.⁶⁵ Thus, the right to appoint a ruler includes in Marsilius's theory

⁶⁴ *DPb*, I. 15. 2; *DPb*, I. 18. 3.

⁶⁵ *DPb*, I. 17. 5.

the right to depose him, and Marsilius cannot permit a single person like the pope or a small group of persons, unless the *universitas civium* provide them with the authority, to rebuke the *pars principans*.⁶⁶

There is, however, another reason in Marsilius's theory — other than a lack of authority — why the ruler is protected from being rebuked or deposed by a representative of the Church. The exercise of the ruling office is bound to the laws of the commonwealth. The ruler can be deposed only if he breaks the law of the community. There is no indication in Marsilius's theory that the ruler could be deposed for any other reason. If human law would forbid heresy, then it would not be in the authority of the pope to judge him, but in the authority of the faithful human legislator or its representative, the General Council.

The idea, moreover, of a heretical ruler being deposed for his heresy does not appear anywhere in Marsilius's theory. If one considers this aspect from the viewpoint of the *Defensor minor*, the conclusion is obvious. Heresy is not to be considered an act that has civil consequences. Since the ruling office is limited to civil authority, there is no room to depose a ruler for violating divine law. By contrast, Marsilius accuses priesthood for being heretical, since they sometimes absolve persons from an oath that binds them to the faithful ruler. All citizens must remain subject to the ruler.⁶⁷

Hobbes's theory has a quite different concept of rulership than Marsilius's, at least as long as one compares only the original Marsilius with Hobbes. If one takes William Marshall's 'translation', or better, reinterpretation, of Marsilius's *Defensor pacis* into consideration, one would conclude that Hobbes's view corresponds very well with Marshall's Marsilius. Although Marshall equates the parliament with Marsilius's *legislator humanus* and the king with the *pars principans*, Marshall's parliament possesses no legislative competence. Rather, the king holds all authority and may delegate parts of it to the parliament to act on the king's behalf.⁶⁸ Also corresponding with Marshall's Marsilius, the king is considered infallible.⁶⁹ This is in keeping with Hobbes's view, in which the ruler

⁶⁶ In *DPb*, I. 18. 3, Marsilius offers an alternative to his model that is based on the principle of representation. He suggests that the legislator could appoint a person or persons who are provided with the authority to take over the controlling function: 'Debet autem iudicium, preceptum et executio cuiuscumque correptionis principantis iuxta illius demeritum seu transgressionem fieri per legislatorem, vel per aliquem aut aliquos legislatoris auctoritate statutos ad hoc.'

⁶⁷ *DPb*, II. 5. 8.

⁶⁸ Lockwood, pp. 97–98.

⁶⁹ Lockwood, pp. 100.

is not even part of the commonwealth, but rather stands outside the community. In part, Hobbes's sovereign is still endowed with a semidivine character. This is, for example, expressed in *De Cive*. Hobbes rebukes the citizen who would criticize the sovereign with this retort: '*Who told you that he was a tyrant, unless you have eaten of the tree of which I told you not to eat?*'⁷⁰ Although there are in Hobbes's theory possibilities for the people to resist the sovereign, they are by no means his main concern. And any institutionalized possibility to depose the sovereign, like Marsilius offers, is simply out of the question — in Hobbes as well as in Marshall's *Defence of Peace*.

Indeed, Hobbes's claims for the sovereign are of the same order of power as that of the Roman bishop, though under different conditions. The papal claim, for example, to depose a king is based on the pope being the chief representative of all Christians. Hobbes objects to this view, and in particular to Innocent's III († 1216) doctrine of the Fourth Council of Lateran. Hobbes cites from *De Haereticis*: 'if a King at the Popes admonition, doe not purge his Kingdome of Haeresies, and being excommunicate for the same, doe not give satisfaction within a year, his Subjects are absolved of the bond of their obedience.'⁷¹ Heresy, however, in this instance means any doctrine that is in opposition to the Roman Church's teachings.⁷² Hobbes's view here is in keeping with Marsilius's. For both, such a doctrine is just another way for the pope to extend his sphere of power, since it allows him to appoint any suitable candidate to a ruling office that has become vacant through the excommunication of the regular officeholder. In this instance of papal power, Hobbes even sees a cause for war between sovereign commonwealths or for civil war.⁷³

Since Hobbes cannot accept that an external sovereign claims the right to intervene into the domestic matters of another sovereign, the same arguments as before take effect. Another aspect of this quote from *De Haereticis* must have been like a red flag for Hobbes. Hobbes's theory is based on the obedience of the citizens. Every attempt to render the principle of obedience meaningless has to be considered by Hobbes as a general attack against his theory.

⁷⁰ Thomas Hobbes, *On the Citizen*, ed. by Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), Chapter 12, paragraph 3. Cf. Genesis 3. 11.

⁷¹ *Leviathan*, Chapter 44, p. 420 (italics in the original).

⁷² *Leviathan*, Chapter 44, p. 420.

⁷³ *Leviathan*, Chapter 44, p. 420.

Clergymen and Worldly Jurisdiction

When Hobbes argues about the necessity to put all clerics under worldly jurisdiction, he returns to the polemics in which he compares the clerics to fairies: 'The *Fairies* are not to be seized on; and brought to answer for the hurt they do. So also the *Ecclesiastiques* vanish away from the Tribunal of Civill Justice.'⁷⁴

Hobbes, however, offers several reasons to insist that all clerics be under worldly jurisdiction. One reason is grounded in his belief that the sovereign has the right to determine what doctrines the clergy may teach. In particular, in regard to places of learning, Hobbes reveals a very sceptical view. Hobbes considers the universities at the time of the end of the reign of Henry VIII to be for the most part defenders of papal power.⁷⁵ Since the 'Sovereign is the Supreme Pastor', the sovereign has the right to determine the doctrines that should be taught.⁷⁶ Without this right, the sovereign would have no power to discipline subversive priests supporting the pope's doctrine and his claim for power.

The sovereign is also the person who has the right to appoint priests. For Hobbes, all priestly authority derives from the authority of the sovereign. Hobbes compares priests to other subordinate ministers in the commonwealth.⁷⁷ Therefore,

[a]ll Pastors, except the Supreme, execute their charges in the Right, that is by the Authority of the Civill Sovereign, that is, *Iure Civili*. But the King, and every other Sovereign, executeth his Office of Supreme Pastor, by immediate Authority from God, that is to say, *in Gods Right*, or *Iure Divino*.⁷⁸

⁷⁴ *Leviathan*, Chapter 47, p. 481.

⁷⁵ *Leviathan*, Chapter 30, p. 237.

⁷⁶ *Leviathan*, Chapter 42, p. 373.

⁷⁷ See *Leviathan*, Chapter 42, p. 373: 'Seeing then in every Christian Common-wealth, the Civill Sovereign is the Supreme Pastor, to whose charge the whole flock of his Subjects is committed, and consequently that it is by his authority, that all other Pastors are made, and have power to teach, and performe all other Pastorall offices; it followeth also, that it is from the Civill Sovereign, that all other Pastors derive their right of Teaching, Preaching, and other functions pertaining to that Office; and that they are but his Ministers; in the same manner as the Magistrates of Towns, Judges in Courts of Justice, and Commanders of Armies, are but all Ministers of him that is the Magistrate of the whole Common-wealth, Judge of all Causes, and Commander of the whole Militia, which is alwaies the Civill Sovereign.'

⁷⁸ *Leviathan*, Chapter 42, p. 374.

In Hobbes's theory, the sovereign can give orders with regard to the salvation of the souls. He is subordinate to no one other than God.⁷⁹ If the salvation of souls is not to be in danger, all priests in the commonwealth have to be under the power and jurisdiction of the sovereign. Otherwise, the orders of the sovereign would lack all force.

Although Hobbes's theory shares some ideas with Marsilius's theory, Marsilius argues from a different perspective in his effort to subordinate priests to worldly jurisdiction. Nonetheless, his main point is, and in this Hobbes agrees with Marsilius, to oppose all papal claims to secular power over Christianity. Otherwise, as Marsilius states, priests would try to exceed the worldly ruler in pride and demand fierce and powerful armies instead of imitating Christ.⁸⁰ This does not only endanger the future status of the citizen's soul but also the future well-being of the entire commonwealth. Furthermore, Marsilius considers every priestly claim to secular power heretical, since this is against Christ's teaching.⁸¹ In addition, should both the secular ruler and the priesthood claim jurisdiction over the citizens, this would lead to the *de facto* existence of two coexisting and conflicting jurisdictions in one commonwealth. Marsilius sees this as the cause of all civil disturbances, if not the decline of the commonwealth as well.⁸²

Marsilius's chief point is based on his suspicions concerning the character of priestly personalities. Like all other citizens, priests can do deeds against human law. And since they can do evil and harm to other people, they have to be subject to the same laws and punishments as anyone else. Marsilius even supports a stronger punishment of priests violating human law since priests should know better. Those who teach a sin should be punished much more than those who come to learn it.⁸³

Marsilius, however, gives an additional motive for having priests under worldly jurisdiction that does not appear in Hobbes: 'For those who enjoy civil honours and advantages, like peace and protection of the human legislator, must not be exempt from the civil burdens and jurisdiction without the determination

⁷⁹ *Leviathan*, Chapter 42, p. 398.

⁸⁰ *DPb*, II. 4. 13.

⁸¹ *DPb*, II. 21. 11.

⁸² *DPb*, I. 17. 4; *DPb*, II. 18. 9; *DPb*, I. 17. 5; *DPb*, I. 17. 7.

⁸³ *DPb*, II. 8. 7.

of the same legislator.⁸⁴ This viewpoint is also related to another of Marsilius's concerns. Marsilius fears, if the priests remain excluded from worldly jurisdiction and from other civil burdens, then a majority of citizens might be tempted to become members of an order, and then almost no one would have to fulfil civil duties.⁸⁵ For these reasons it is not only necessary to have the priesthood under worldly jurisdiction, it is also necessary that priests be under the supervision of the ruler.⁸⁶

Marsilius, however, goes one important step further. The same argument cannot be found in Hobbes. Although Marsilius's priests are highly responsible citizens, they are excluded from all rights of *dominium*. Given the double meaning of *dominium* — referring both to property and to power — this is an obvious consequence of Marsilius's theory.

Conclusion

What conclusions can one draw from the fact that both authors spend at least half of their most prominent works on religious topics? What conclusions can one draw from the fact that both authors spend so much energy on the exclusion of all papal and religious influence on the political community?

Marsilius is often considered a reformer of the Church. One can also find this view concerning Hobbes's theory. As A. P. Martinich states, 'one of Hobbes's chief projects was to create a new theory of Christianity [...]. His project was to pour the old wine of biblical Christianity into the new skins of scientific theory.'⁸⁷

⁸⁴ *DPc*, II. 8. 9; 'Qui enim gaudet honoribus et civilibus commodis, ut pace ac tutela legislatoris humani, ab oneribus et iurisdiccione non debet eximi absque determinacione legislatoris eiusdem': *DPb*, II. 8. 9.

⁸⁵ *DPb*, II. 8. 9; *DPb*, II. 23. 10. For a more detailed analysis of this aspect see Cary J. Nederman, 'Community and Self-Interest: Marsiglio of Padua on Civil Life and Private Advantage', *Review of Politics*, 65.4 (2003), 395–416 (pp. 407–09).

⁸⁶ *DPb*, II. 17.

⁸⁷ Martinich, p. 7. Although more recently Hobbes has been discussed mainly under the question of whether he is to be called an atheist, Patricia Springborg's objection remains important. She argues that a scepticism concerning Hobbes's 'personal religious beliefs does not, however, imply that one should be sceptical of the relevance of his theological arguments to his political theory'; see Patricia Springborg, 'Leviathan and the Problem of Ecclesiastical Authority', *Political Theory*, 3 (1975), 289–303 (p. 289).

Neither of them, however, disputes the person or the office of the Roman bishop *per se*. Nevertheless, they do consider papal policies as the main troublemaker — not only causing harm to the commonwealth but also endangering the future status of the citizens' souls. But Hobbes's polemic is not just aimed at the Roman Church. Hobbes also attacks the Presbyterian clergy. He considers both of them as responsible for the 'Darknesse in Religion'.⁸⁸

Since religion remains an integral part of their theories, Marsilius and Hobbes are forced to offer a 'new' politics toward the Church. Both Marsilius and Hobbes focus on papal authority. They see the main source for harm to the commonwealth in the actual status of the pope. It is difficult, however, to draw conclusions from this redefined view of religion in their theories. Both authors allow for a secular reading of their theories. But both also open themselves to a very religious understanding of the commonwealth. One of the most significant results of this is the understanding of the political as an independent sphere in human communities.

If it is possible to describe Marsilius's position as 'reactive' or 'preventive', Hobbes's Church policy has a much more active character. Hobbes's theory, in fact, is not too far from the papal position insofar as Hobbes claims for his sovereign not only the rights and responsibilities Marsilius ascribes to the legislator and the ruler but also all rights the pope asserts for himself — by giving up the universal demand of the Roman Church. If one keeps in mind Hobbes's outline in the third part of the *Leviathan* and the divine character of the sovereign, one might even conclude that his theory is a lot less secular than Marsilius's theory. Nonetheless, the number of similar arguments in Marsilius's and Hobbes's theories indicates at least a greater continuity between late medieval and early modern political discourses.

A completely different question, however, is whether the 'old wine of biblical Christianity' Hobbes wanted to transfer into new skins has become vinegar or is still good wine.

⁸⁸ *Leviathan*, Chapter 47, p. 476.

POWER AND POWERLESSNESS IN THE POLITICAL THOUGHT OF MARSILIUS OF PADUA

Joseph Canning

The correct location of ruling power and its legitimate exercise were the central questions in Marsilius's political thought and, for him, the key to the maintenance of peace, his prime concern.

At the start of the *Defensor pacis*, he declared that his purpose was to reveal the causes of strife, and especially a certain hidden one, which afflicted Italy in particular, so that rulers and ruled might more easily live in tranquillity.¹ As the work progressed, he argued that ruling power in the right hands secured peace, whereas in the wrong hands it led to discord. The proper actions of the ruler were 'the efficient cause itself of tranquillity'; any impediments produced strife and loss of tranquillity.² The hidden cause destroying peace was of course the papacy's exercise of plenitude of power, Marsilius's main target and the problem 'which neither Aristotle nor any other philosopher of his time or before could have perceived'.³ The theme of power continued in the *Defensor minor*.

¹ Marsilius von Padua, *Defensor pacis*, ed. by Richard Scholz, *Fontes Iuris Germanici Antiqui*, 2 vols (Hannover: Hahnsche Buchhandlung, 1932/33), I. 1. 7. Hereafter, citations of this text appear as *DPb* along with discourse, chapter, and section number. All translations into English are my own.

² 'Cum igitur accio debita principantis sit omnium civilium commodorum et predictorum causa efficiens et conservans [...] erit ipsa tranquillitatis causa factiva [...]. Quod vero huius partis accionem per se impediverit, ab eo civitatis intranquillitas seu discordia proveniet, tanquam causa factiva': *DPb*, I. 19. 3. Cf. *DPb*, II. 5.7: 'Ecce testimonium eius quod diximus ultimo prime, videlicet quod causa tranquillitatis factiva et conservativa est accio principantis debita, non impedita.'

³ 'Hanc siquidem [causam] eiusque ortum et speciem nec Aristoteles aut philosophorum alter sui temporis vel prioris conspicerere potuit': *DPb*, I. 1. 3; *DPb*, I. 1. 7; *DPb*, I. 19. 3.

My aim in this paper is to deepen the argument which I have expressed elsewhere that the themes of power and coercion were at the core of Marsilius's political thought: that his prime concern lay with the nature, exercise, and function of power.⁴ Further reflection has only reinforced my view that an interpretation from the standpoint of power gives a more accurate understanding of Marsilius's preoccupations and intentions. Modern historians have tended to neglect this approach. Alan Gewirth himself did say, 'the force of Marsilius's ecclesiastic ideas is to be found equally in his solution of the problems of political power as such: those problems receive at his hands a consistent and striking treatment from a fresh point of view,' but did not elaborate this insight to any significant extent.⁵ The approach that I am advocating provides an alternative view to interpretations privileging consent as the guiding concept for Marsilius's theory of politics — that his notion of the structure of the civil community articulated the consent of the people: a view argued pre-eminently in recent years by Cary J. Nederman.⁶

This is not to deny the importance of consent in Marsilius's theories but rather its primacy. Power, for him, was the principle of action, the dynamic of political society, in the form of the will of the people and of that of the rulers whom the people appointed. Indeed, consent could be seen as an expression of the power of the people. It was power which affected the citizens' lives for good or ill and which through the actions of the ruler preserved the city or the kingdom. Consent, on the other hand, provided the origins of power: the structure within which power was exercised.

Power within the Political Community

Marsilius was particularly concerned that the necessary power of the ruler had to be secure. Fundamental to his thought was the notion that law was, properly speaking, a coercive precept, the right to make which lay with an undivided

⁴ See Joseph Canning, 'The Role of Power in the Political Thought of Marsilius of Padua', *History of Political Thought*, 20.1 (1999), 21–34.

⁵ Alan Gewirth, *Marsilius of Padua and Medieval Political Philosophy* (New York: Columbia University Press, 1951), p. 9.

⁶ See esp., Cary J. Nederman, *Community and Consent: The Secular Political Theory of Marsiglio of Padua's Defensor Pacis* (Lanham, MD: Rowman & Littlefield Publishers, 1995). Hereafter, citations of this text appear as CC.

sovereign, the human legislator. But law in itself could achieve nothing. It was the active power of the ruling part (the *pars principans*) which gave that law its coercive effect. The question of the security of the ruler therefore became paramount. If there were no secure rulership, then the law could not be put into effect and peace achieved.⁷

Marsilius focused on the theme of the security of the ruler in *Defensor pacis*, Discourse I, Chapter 11. While discussing law in its strict, coercive sense he said:

We wish to show the necessary purpose of law in its last and most proper sense. Its prime purpose is to achieve civil justice and the common benefit; but its secondary purpose is to provide some security for rulers, especially hereditary ones, and the long duration of rulership.⁸

This 'secondary purpose' of law was achieved by the ruler's own actions, by keeping within the law in his exercise of rulership. As Marsilius went on to say, 'It is more advantageous for rulers to be regulated and limited by law than to make civil judgments by their own will; for they will do nothing depraved and reprehensible if they follow the law, and their rulership will thereby be made more secure and long-lasting.'⁹ These passages show that he did not see human law as simply an expression of power; law, as a coercive rule, was the necessary means of procuring the aim of the common good for which secure and lasting government was required.

Marsilius confronted the practical problem of how the common good could actually be brought about. He held up the Spartan king Theopompus as an example of a ruler who ruled according to the laws and eschewed too much power:

They say that, when his wife asked him [Theopompus] whether he was not ashamed to hand on to his sons a smaller kingdom than he had received from his father, he replied, 'You should not say that, for the kingdom I pass on will last longer.' O heroic

⁷ For the primordial importance of the *pars principans* see Georges de Lagarde, *La naissance de esprit laïque au déclin du moyen âge*, rev. edn (Leuven and Paris: Editions E. Nauwelaerts and Beatrice-Nauwelaerts, 1956–70), III: *Le Defensor pacis* (1970), pp. 113–23.

⁸ 'Eius [i.e., legis] secundum ultimam et propriissimam significationem ostendere volumus necessitatem finalem; principaliorum quidem civile iustum et conferens commune, assecutivam vero quandam principancium, maxime secundum generis successionem, securitatem et principatus diuturnitatem': *DPb*, I. II. 1.

⁹ 'Principantibus expedit magis lege regulari et determinari, quam arbitrio proprio iudicia ferre civilia; secundum legem enim nil pravum aut reprehensibile agent, unde securior et diuturnior efficitur principatus eorum': *DPb*, I. II. 7.

voice, proceeding from Theopompus' unheard-of prudence! How it should be heeded by those who wish to wield plenitude of power over their subjects outside the laws! Many rulers, not listening to this voice have come to ruin.¹⁰

For security both the ruler and the ruled had to be considered. Coercive law exercised by the ruler was necessary for the peace and survival of the political community, but that ruler must not act on his own whim; rather he must act within the structure of the law — his power was necessary but limited. The law protected the ruler's power which itself held the community together by enforcing the law. There was, therefore, a form of circular process: the human legislator set up the ruler who by the exercise of his power secured the survival of the corporate body of citizens (*universitas civium*). The ruler's power operated within the law to enforce it and was itself reinforced by the law. The human legislator ultimately made the law, but that law must protect the ruler whom it needed to put the law into effect for the common good.

The necessity of securing the ruler's power for the survival of the political community was made even clearer by Marsilius's use of biological or medical language. The use of organic imagery was of course a commonplace of medieval political ideas. But what gave an edge to Marsilius's usage was his background in medicine. He referred to Aristotle as an authority for likening the political community to an animal but developed the implications of this analogy considerably:

Let us assume with Aristotle in Book I, chapter 2, and Book V, chapter 3 of his *Politics*, that a city is like an animate or animal nature. For just as an animal, well-disposed according to its nature, is composed of certain proportioned parts ordered to one another and acting in mutual communication for the good of the whole, so a city is constituted from certain such parts, when it is well disposed and instituted according to reason. The relationship therefore between the animal (and its parts) and health, is seen to be similar to that between the city or kingdom (and its parts) and tranquillity.¹¹

¹⁰ 'Que quidem, id est hec verba, aiunt et ad uxorem respondisse ipsum, que, scilicet uxor, dixerat: Si nihil, id est si non, verecundaretur, minus regnum tradens filiis, quam a patre accepit? cui verba iam dicta respondit: "Non oportet hoc dicere, trado enim diuturnius." O vox heroica, ex inaudita prudencia Theopompi procedens, et quam notanda hiis qui extra leges uti volunt plenitudine potestatis in subditos; quam inadvertentes multi principantium corruerunt': *DPb*, I. II. 8.

¹¹ 'Suscipiamus cum Aristotele primo et quinto Politice sue capitulis 2o et 3o civitatem esse velut animatam seu animale naturam quandam. Nam sicuti animal bene dispositum secundum naturam componitur ex quibusdam proporcionatis partibus invicem ordinatis suaque opera sibi mutuo communicantibus et ad totum, sic civitas ex quibusdam talibus constituitur, cum bene disposita et instituta fuerit secundum rationem. Qualis est igitur comparacio animalis et suarum

The political community, envisaged as an animal, was a fact of life kept in a healthy, that is, peaceful, condition by the proper functioning of its parts. Its ruling one had therefore an integral and necessary function — to exercise power for the common good within a body politic.

In this biological interpretation lay Marsilius's distinctive voice. It is especially difficult to categorize his language. Although he made use of theological and philosophical scholastic discourse, had some restricted acquaintance with juristic quotations, and could refer to some notoriously well-known canon law decretals, he largely invented a language of his own.¹² He was trying to present what he perceived reality to be. This was why recourse to biological and medical imagery was so useful for him. There could be no argument with biology: it was the way things were. Such a way of thinking was ideally suited to a purely naturalistic and this-worldly view of human society. Furthermore, it meant that he conceived of the political community as a unitary whole, that is, as an entity rather than a collection of different human beings. He was not concerned with the consent of individuals but with the government and survival of a body politic seen as one organism.

In Discourse I, Chapter 15, Marsilius produced his main treatment of the role of the ruler or government in terms of biological language. The *universitas civium* or its weightier part (*valencior pars*) was identified with the soul; the ruling part or government (*pars principans/principatus*) was the heart and had the role of establishing the other parts and of putting the precepts of the law into effect through coercion:

From the soul of the corporation of citizens or its weightier part is first formed or should be formed in it [i.e. the city] one part analogous to the heart, in which it has indeed set up a certain virtue or form with the active power or authority to institute the remaining parts of the city. This part, however, is the government whose virtue universal in causality is the law, and whose active power is the authority to judge, command and execute sentences concerning civil justice and benefit. On this account, Aristotle in *Politics*, 7.6, said that this part is the most necessary of all in the city.¹³

parcium ad sanitatem, talis videbitur civitatis sive regni et suarum parcium ad tranquillitatem': *DPb*, I. 2. 3. See Aristotle, *Politica*, ed. by W. D. Ross (Oxford: Oxford University Press, 1964), I. 5. 1254a28–1254b2 (p. 7), and 5. 3. 1302b33–1303a2 (p. 151).

¹² I am particularly indebted to Annabel Brett's paper and discussion after it at Leeds IMC 2003 on this question and Marsilius's adoption of value-free language. See also Canning, 'The Role of Power', p. 34.

¹³ 'Nam ab anima universitatis civium aut eius valencioris partis formatur aut formari debet in ea pars una primum proporcionata cordi, in qua siquidem virtutem quandam seu formam

He went on to make it clear that, 'Unless the government remains in existence, the civil community cannot last or last long'.¹⁴ This was because the role of the government was to settle disputes which would otherwise destroy the city and lead to the loss of the sufficient life. People could not be left to themselves.

In Discourse I, Chapter 15, Section 7, Marsilius reiterated that 'the efficient cause of the city, namely the soul of the corporate body' established the authority or power of the government.¹⁵ He then elaborated his point by taking the organic imagery further, by likening the authority of rulership to the heat of the heart and the use of armed or coercive instrumental power to the warmth or spirit of the animal. But he stressed that the ruler must exercise the coercive force allowed him in such a way that he continued to act within the law:

The authority of rulership given to some man, and which is analogous to the heat of the heart, and also his armed or coercive instrumental power which is analogous to warmth, which we call spirit, should be regulated by the law in judging, commanding and executing matters concerning civil justice and benefit. For otherwise the ruler would not act towards his proper end, namely the conservation of the city, as was demonstrated in chapter 11 above.¹⁶

Through his use of biological language, Marsilius had clarified the crucial role of the ruler or government in securing the city through the exercise of power, given by the human legislator, the corporate body of citizens, and wielded according to the coercive law made by that legislator. The role of the *pars principans* was to translate the human legislator's ultimate power into action by exercising immediate and, if necessary, physical coercion. The government directly impinged on its citizens' lives both through its own actions and through

statuit cum activa potencia seu auctoritate instituendi partes reliquas civitatis. Hec autem pars est principatus, cuius quidem virtus causalitate universalis lex est, et cuius activa potencia est auctoritas iudicandi, precipiendi et exequendi sentencias conferencium et iustorum civilium, propter quod dixit Aristoteles 7^o Politice, cap. 6^o, partem hanc esse omnium aliarum necessariissimam in civitate': *DPb*, I. 15. 6. See *Politica*, 7. 8. 1328b13–15 (p. 225).

¹⁴ 'Sine principatus inexistencia civilis communitas manere aut diu manere non potest': *DPb*, I. 15. 6.

¹⁵ 'Principium factivum civitatis, anima videlicet universitatis': *DPb*, I. 15. 7.

¹⁶ 'Sic quoque auctoritas principandi alicui hominum data, caliditati cordis tamquam subiecti proporcionata. Sic etiam ipsius armata seu coactiva potestas instrumentalis, calori, quem spiritum diximus, proportionalis, debet regulari per legem in iudicando, precipiendo et exequendo de iustis et conferentibus civilibus; aliter enim non ageret principans ad debitum finem, conservacionem scilicet civitatis, quemadmodum demonstratum est 11^o huius', *DPb*, I. 15. 7.

appointing the personnel of the city's other agencies or parts which it had itself instituted.

Marsilius was concerned to establish a model for the power structure of the political community. In the will of the human legislator lay the original power of rulership put into effect by the *pars principans*:

For the first citizen or part of the civil government, namely the ruler, whether he be one man or many, should understand, through the human and divine truths which have been written in this book, that to him alone belongs the authority to command the subject multitude collectively or distributively, and to constrain anyone, if it is expedient, according to the laws made; and to do nothing apart from the laws, especially in difficult circumstances, without the consent of the subject multitude or legislator; and that the multitude or legislator should not be provoked by injury, because in its expressed will consists the virtue and authority of rulership.¹⁷

Indeed, it was the corporation of citizens which had 'the power to coerce transgressors of the law'.¹⁸ On one level, it was consent which articulated the political community — the corporation of citizens would, for instance, more readily obey those laws to which it had agreed.¹⁹ Yet the consent of the citizen body expressed as the will of the human legislator became an exertion of power through the mechanism of the *pars principans*.²⁰ But the apparatus of government once set up coerced its citizens from whom it derived its authority. The legislator, the source of power, became in this sense also a subject multitude.

There is further evidence that Marsilius increasingly collapsed consent into power through the identification of the human legislator with the emperor. Already in the *Defensor pacis* (which he had dedicated to Louis IV of Bavaria)²¹ Marsilius had referred to the 'human legislator or the ruler by its authority' (*legislator humanus vel ipsius auctoritate principans*) and had accepted that the

¹⁷ 'Primus namque civis vel civilis regiminis pars, principans scilicet, sit unicus homo vel plures, comprehendet per eas que in hoc libro scripte sunt humane veritates atque divine, soli sibi convenire auctoritatem precipiendi subiecte multitudini communiter aut divisim; et unumquemque arcere, si expediatur, secundum positas leges et nil preter has, arduum presertim, agere absque multitudinis subiecte seu legislatoris consensu; nec iniuria provocandam esse multitudinem seu legislatorem, quoniam in ipsius expressa voluntate consistit virtus et auctoritas principatus': *DPb*, III. 3.

¹⁸ 'Potencia transgressorum coactiva': *DPb*, I. 12. 6.

¹⁹ *DPb*, I. 12. 6.

²⁰ But see *CC*, p. 51, n. 66, where Nederman argues against the identification of will with consent in the *Defensor pacis*.

²¹ *DPb*, I. 1. 6.

legislator could be one or many.²² In the *Defensor minor*, the identification had become overt. Marsilius explained that the corporation of provinces had transferred the power to make laws to the Roman people, thus making it the human legislator for the whole world. The Roman people had in turn transferred its authority to the emperor, so that 'according to human law there is a legislator, that is the corporation of citizens or its weightier part, or the supreme prince of the Romans called the emperor'.²³ By this stage the original consent of the people was very much in the distant background. Theoretically, the peoples of the world could revoke their grant to the Roman people which, in turn, could revoke its transfer of power to the emperor. In this way, Marsilius was able to maintain that in *Defensor minor*, Chapter 12, Section 1, he was applying the model for the establishment of governmental authority which he had elaborated in *Defensor pacis*, Discourse 1, Chapter 12.

The Church's Exercise of Power

The clarification of the role of power within the political community prepared the way for Marsilius's prime concern: to demonstrate that the Church could not legitimately possess and exercise power. By restricting the source of power ultimately to the human legislator and its direct exercise to the *pars principans* within the civil community, Marsilius sought to destroy the Church's claims to jurisdiction and rulership, and thus avoid the existence of two legislators in one community, the current source of strife and loss of peace.²⁴ This involved, specifically, the destruction of the papacy's pretension to *plenitudo potestatis* (plenitude of power) and the whole structure of canon law.

But why should the Church not have jurisdictional and governmental power? What could be wrong with the notion of an ecclesiastical institution which, as such, operated by rules and laws to lead the Christian community to salvation?

²² *DPb*, II. 17. 9; II. 18. 8; II. 20. 2; II. 21. 1–8.

²³ 'Est etiam similiter secundum legem humanam legislator, ut civium universitas aut eius pars valentior, vel Romanus princeps summus imperator vocatus': Marsile de Padoue, *Oeuvres mineures*, trans. by Colette Jeudy and Jeannine Quillet (Paris: Editions CNRS, 1979), 13. 9 (p. 280). See also Marsilius of Padua, *Defensor minor and De translatione Imperii*, ed. by Cary J. Nederman, trans. by Cary J. Nederman and Fiona Watson (Cambridge: Cambridge University Press, 1993), 12. 1 (p. 254). Hereafter, citations of this text appear as *DM* along with chapter, section, and page number.

²⁴ *DM*, 2. 5 (p. 180); *DPb*, I. 17.

The Church in the fourteenth century clearly was in reality an ancient corporation with hallowed jurisdiction and lordship. The pope himself was the acme of monarchy. And canon law was recognized throughout Latin Christendom: indeed, it stood side-by-side with Roman law as a common law (*ius commune*), and had performed a sterling role as a civilizing influence on European society. Why question all this? Why seek to pull down something that could appear such a positive part of everyone's life?

Marsilius's conception of the nature of the Church provided an answer. There were in the Middle Ages two ways of understanding what the Church was. It could be seen in a narrower sense as the ecclesiastical institution exercising jurisdiction through its hierarchy of officers. A sign of this would be the way in which the pope's power of jurisdiction was seen as being superior to his sacerdotal power of orders. On the other hand, the Church could be identified with the whole body of the faithful, clerical and lay, men and women, priests and people. Marsilius adopted this latter view with great clarity of insight:

Again, this word 'church' has another meaning and it is the truest of all and the most appropriate according to the first application of this word or the intention of those who first employed it, although it is not now so widely known or in tune with modern usage. That meaning signifies the corporate body of the faithful believing in and invoking the name of Christ, and all the parts of this corporate body in whatever community, even the domestic. And this was the first application of this term and the customary usage of it among the apostles and in the primitive church. Hence the apostle wrote in the first chapter of the first letter to the Corinthians: 'To the church which is in Corinth, to the sanctified in Christ Jesus, called to be saints, with all those who invoke the name of our Lord Jesus Christ.'²⁵

The Church was in essence a purely spiritual body bound together by faith. In such a body there was no place for coercive power for priests and bishops. Indeed, as regards what Marsilius called their 'essential authority' (that is, their power of orders), all priests and bishops were on the same level:

²⁵ 'Rursum, secundum aliam significationem dicitur hoc nomen "ecclesia", et omnium verissime ac propriissime secundum primam impositionem huius nominis seu intencionem primorum imponencium, licet non ita famose seu secundum modernum usum, de universitate fidelium credencium et invocancium nomen Christi, et de huius universitatis partibus omnibus, in quacumque communitate, eciam domestica. Et hec fuit impositio prima huius dictionis et consuetus usus eius apud apostolos et in ecclesia primitiva. Vnde apostolus 1a ad Corinthios 10: "Ecclesie que est Corinthi sanctificatis in Christo Iesu, vocatis sanctis, cum omnibus qui invocant nomen Domini nostri Iesu Christi": *DPb*, II. 2. 3. The reference is to 1 Corinthians 1. 2.

Now, as regards this priestly character, whether one or many, which we have called the power of consecrating the sacrament of the eucharist, or the body and blood of Christ, and the power of loosing and binding men from their sins, and which we shall also in consequence call the authority essential to and inseparable from a priest, insofar as he is a priest, it seems to me in all probability that all priests have a character which is the same in kind, and that the Roman bishop or anyone else does not have this in greater measure than any aforementioned simple priest. For as regards this authority, whether one or many, a bishop is no different from a priest.²⁶

He went on to say, ‘These words, “priest” and “bishop”, were synonymous in the primitive church.’²⁷ But Marsilius then took the next step: the priesthood of this spiritual Church must also be poor.

It would be difficult to overemphasize how important the debate about poverty and property was within the Church when Marsilius was composing the *Defensor pacis* and the *Defensor minor*. It had been the dominant question since the middle of the previous century. It raised the profoundest questions about Christian society. Power was seen as connected to property, poverty to powerlessness. But poverty and powerlessness were viewed by their advocates in a positive way, as bringing spiritual gain through material deprivation, whereas power and property were perceived to be dangers to the religious life. Their opponents saw possessions and power as integral to the Church’s existence on earth and an aid to its mission of leading the faithful to salvation. The controversy was already old by the time Marsilius wrote. The immediate context of his writings was the debate about Franciscan poverty and in particular the conflict between Pope John XXII and the Spiritual Franciscans; but the roots of this battle went back to the disputes between secular and mendicant clergy at the University of Paris in the 1250s and 1260s.²⁸ Indeed, the question of poverty and

²⁶ ‘Hunc siquidem sacerdotalem characterem sive unum sive plures, quem diximus potestatem conficiendi sacramentum eucharistie seu corporis et sanguinis Christi ac potestatem solvendi atque ligandi homines a peccatis, et quem etiam deinceps appellabimus auctoritatem essentialem seu inseparabilem presbytero, inquantum presbyter est, probabiliter mihi videtur, quod omnes sacerdotes habent eundem specie, nec ampliorem habet hunc Romanus episcopus aut alter aliquis, quam simplex dictus sacerdos quicumque. Nam in hac auctoritate, sive una sive plures extent, episcopus a sacerdote non differt’: *DPb*, II. 15. 4.

²⁷ ‘Hec nomina “presbyter” et “episcopus” in ecclesia primitiva fuerunt synonyma’: *DPb*, II. 15. 5.

²⁸ See for instance Kerry E. Spiers, ‘The Ecclesiastical Poverty Theory of Marsilius of Padua: Sources and Significance’, *Il pensiero politico*, 10.1 (1977), 6–7, and Marino Damiano, ‘Funzione e concetto della povertà evangelica in Marsilio da Padova’, *Medioevo*, 6 (1980), 411–30.

riches posed a continuous challenge to medieval Christianity; the ambiguity over possessions was clear to see in the New Testament. The dispute over poverty was old indeed, but Marsilius had something new, indeed unique, to contribute, because he provided a fresh political and legal argument in support of the broad poverty movement within Western Christianity. Indeed, Marsilius's thesis about the nature of power was most clearly expressed under the guise of his treatment of its antithesis — poverty and powerlessness.

Marsilius did indeed produce a general, naturalistic model of the civil community in Discourse I of the *Defensor pacis*, but the cities, kingdoms, or empire with which he was concerned were seen by him as being in fact Christian.²⁹ This was why he worried about papal claims and did not simply ignore them; why he devoted the largest part of the *Defensor pacis*, Discourse II, to Christian argumentation to disprove papal pretensions; and why he was so intent that the civil authorities should control the externals of religion. The papacy, as an office exercising coercive jurisdiction, he held to have been instituted not by Christ but by Constantine through that emperor's Donation (which Marsilius believed to have been valid and authentic):

The decrees or histories of the Roman pontiffs witness to what I have said. For in them is found inscribed and approved by them a privilege of Constantine, emperor of the Romans, by which he conceded to Sylvester, the Roman pontiff, coercive jurisdiction over all the churches in the world, and all other priests or bishops. And since any Roman pope, and with him the remaining company of priests or bishops, affirms that that concession was valid, they must in consequence concede that the same Constantine originally had this jurisdiction and power over them, especially since no such jurisdiction over any cleric or layman is known to belong to them by virtue of the words of Scripture.³⁰

²⁹ See Janet Coleman, *A History of Political Thought from the Middle Ages to the Renaissance* (Oxford: Blackwell, 2000), p. 136.

³⁰ 'Testantur autem dictis decreta seu historie quedam Romanorum pontificum. Ipsi enim inscriptum reperitur, et ab eisdem approbatum privilegium quoddam Constantini Romanorum imperatoris, quo beato Silvestro Romano pontifici concessit iurisdictionem coactivam super omnes mundi ecclesias, reliquosque presbyteros seu episcopos omnes. Cumque concessionem eam fuisse validam fateatur quilibet papa Romanus et cum eo presbyterorum seu episcoporum reliquus cetus, consequenter ipsis concedendum est eundem Constantinum hanc iurisdictionem seu potestatem in eos primitus habuisse, presertim cum ad ipsos virtute verborum scripture nulli talis iurisdiccio in quemquam clericum aut laicum pertinere noscatur': *DPb*, II. II. 8.

Constantine as emperor was able to grant such coercive jurisdiction to the pope. Whether he had been prudent to do so was another matter.³¹ While the Roman Empire flourished, the Roman bishops exercised this authority by grant of the ruler. It was only later with the collapse of imperial power and in particular at the highly perilous times of vacancies on the emperor's throne that the papacy had surreptitiously come to claim an illegitimate plenitude of coercive power by divine law, a power not only over the clergy, but also over all governments, peoples, and individuals in the world.³² This is why Marsilius thought the papacy was particularly dangerous for the imperial power at the time at which he was writing both his political tracts: John XXII and Benedict XII (despite an attempt at settlement) were claiming that there was an interregnum, because they did not recognize Louis IV as emperor. Any valid coercive jurisdiction accorded to the pope would have to come from the human legislator or the ruler by its authority: by virtue of their essential office, priests and bishops had no coercive power, but they could be given this (wisely or unwisely) by the human legislator, as indeed could anyone. Marsilius accepted that there were practical advantages in having a head bishop and that the Roman Church had here a pre-eminent historical claim. But for his own times, given all the ill-effects of contemporary papal power, Marsilius stressed that such a headship would definitely not entail coercive jurisdiction and that the authority to establish a head bishop in the Church belonged to the faithful human legislator or the ruler by its authority in accordance with the advice and decision of a general council of the Church, called by that legislator who enforced its ordinances.³³ Not only that, the whole Church hierarchy with its structure of jurisdiction, was, for Marsilius, a purely human institution.³⁴ He applied to ecclesiastical offices the same model which he employed for all functions within the Christian civil community: the human legislator (here the faithful human legislator) or whole body of believer citizens elected those who were to be promoted to ecclesiastical offices, appointed priests and those of other ecclesiastical ranks and could remove them:

I wish to show that the election and approval of someone to be promoted to holy orders belongs to the judge in the third sense, namely the decision of the human legislator in perfect communities of believers, as does, at the same time, his second institution

³¹ Constantine had given to the Roman bishop many powers which he was not obliged to grant: *DPb*, II. 22. 10.

³² *DPb*, II. 22. 20.

³³ *DPb*, II. 22. 11; II. 22. 6; II. 22. 9.

³⁴ See for instance, *DPb*, II. 15. 10.

whereby a bishop or curate is put over a faithful people in a particular place (this applies also to the remaining minor ecclesiastical offices), and also his removal from or deprivation of office [...]. We can prove this first by the same or similar arguments, by which in the 12th, 13th and 15th chapters of Discourse I, we showed that legislation and the institution of rulers belonged to the corporation of citizens. It is only necessary to change the minor term of the demonstration, so that the terms 'law' and 'ruler' in the demonstration are replaced with 'election or approval of a person to be promoted to holy orders, his institution or appointment to presiding over a particular people and province, and his deprivation or removal therefrom on account of a crime or some other reasonable cause.'³⁵

Marsilius trusted the faithful's capacity for discernment. The authority of the human legislator in these respects could be collapsed into that of the emperor or indeed a king, as was shown by Marsilius's approval of the practice of the French monarchs in the appointment to ecclesiastical offices and benefices.³⁶ He was anxious, in short, to reserve all jurisdictional and coercive power in religious matters to the human legislator or the ruler by its authority and to derive all ecclesiastical offices from the same source: in this way, the integrity of the community's structure of government would be upheld.

This was the context in which Marsilius maintained that priests, because they lacked coercive power, should be poor. He gave prominence to this theme, devoting Chapters 11 to 14 of Discourse II specifically to the poverty which he advocated for the clergy. His basic argument was simple. Because Christ and the apostles had been poor, priests should be poor like Christ: 'See therefore that the status of poverty and contempt for the world befits every perfect person,

³⁵ 'Ostendere volo, promovendi cuiuslibet ad sacrum ordinem electionem atque approbationem pertinere ad iudicem tercię significacionis, sententiam scilicet humani legislatoris in communitatibus fidelium iam perfectis; et cum hoc simul secundariam eius institutionem, qua scilicet fideli populo alicui et in certo loco preficitur episcopus aut curatus, sicque in reliquis minoribus ecclesiasticis officiis; ab ea quoque remotionem seu privationem, ad exercitium eciam secundum eam ecclesiasticos, si oporteat, arcere ministros [...]. Primum quidem convinci potest eisdem aut consimilibus demonstracionibus, qualibus 12^o, 13^o et 15^o prime ad universitatem civium legumlationem et principantium institutionem ostendimus pertinere, sola demonstracionum mutata extremitate minori, ut videlicet "electio seu persone ad ordinem sacrum promovende approbacio, ipsiusque institutio seu determinacio ad certe plebis atque provincie presidatum, eiusque privacio seu remocio ab eisdem propter delictum vel rationabilem alteram causam" assumantur in demonstracionibus pro termino "legis" aut "principantis": *DPb*, II. 17. 11. See also *DPb*, II. 17. 9.

³⁶ See for instance, *DPb*, II. 17. 17; *DPb*, II. 17. 15; cf. *DPb*, II. 28. 17.

especially a disciple of Christ and his successor in the pastoral office.³⁷ Marsilius overtly made the connection between poverty and powerlessness, in that Christ, he said, had separated the offices of priest or bishop from that of ruler and had eschewed temporal possessions.³⁸ In contrast, property and power went together, in that rulers needed wealth to support their authority:

On the contrary, the condition of exterior and abject poverty is not suited to the ruler, because there befits him a status which good subjects may respect and bad ones fear, and through which he may also, if he should, be able to coerce rebels and transgressors of the law. He would not be able to do this conveniently, if he had a poor and low condition, on account of which the office of evangelization is also not appropriate for him.³⁹

Possessions and power belonged properly within the ambit of the civil community, not the Church. For Marsilius, poverty involved having no power. Thus his demand that priests and bishops, the Roman bishop included, should be poor destroyed the basis for papal *plenitudo potestatis*.⁴⁰ It made such a claim empty of meaning and effect. As Marsilius said in one of his most virulent diatribes: 'But let the Roman bishop with his successors in the aforementioned see and the other priests, deacons and spiritual ministers [...] strive to imitate Christ and the apostles by simply relinquishing secular rulership and the ownership of temporal goods.'⁴¹ The poverty argument was central to Marsilius's antipapal thesis.

It is hardly possible to determine whether Marsilius wrote under Franciscan influence. He may well have. But there was a whole range of other sources for his views. He did not directly refer to St Francis in his works. But he certainly knew a lot about the issues and arguments involved in the dominant dispute between the papacy and the Spirituals (and other Franciscans), during the reigns of John XXII

³⁷ 'Ecce ergo quod status paupertatis et mundi contemptus decet omnem perfectum, precipue Christi discipulum, et successorem in officio pastoralis': *DPb*, II. II. 3.

³⁸ *DPb*, II. II. 2.

³⁹ 'Econtra status paupertatis exterioris et abiectus non decet principantem, quoniam expedit illi status quem boni subditi revereantur et mali vereantur, per quem eciam, si oporteat, rebelles legum transgressores valeat coercere; quod nec posset facere convenienter, si statum pauperem et deiectum haberet, propter quod eciam illi non convenit evangelizantis officium': *DPb*, II. II. 7.

⁴⁰ See also Marino Damiani, *Alvaro Pelagio: Teocratico scontento*, Biblioteca di Studi Francescani, 17 (Florence: Studi Francescani, 1984), p. 8.

⁴¹ 'Qui vero Romanus episcopus cum sibi successoribus in sede predicta omnesque reliqui sacerdotes atque diaconi et spirituales ministri [...] studeant imitari Christum et apostolos, seculares principatus et temporalium dominia simpliciter abdicando': *DPb*, II. 26. 19.

and then of Benedict XII. Indeed, a reading of *Defensor pacis*, Discourse II, Chapters 12 and 14, especially, shows that Marsilius had deep knowledge of the questions involved in this conflict. He vehemently rejected, for instance, John's argument that simple use of fact (*simplex usus facti*) was impossible and that morally there had to be a right of use (*ius utendi*). Marsilius aligned himself with the Pope's Franciscan critics who accused the pontiff of heresy on this point:

The simple use of a thing or the lawful having of it are separate from all ownership already mentioned, or from the power to make a claim or prohibition concerning a thing or any aspect of it. From this, it also clearly follows of necessity that it is an insane heresy, if anyone maintains that a thing or the use of it cannot be had without the aforementioned ownership. Anyone saying this feels nothing other than that Christ's counsel cannot be fulfilled, which is a blatant lie and, as we have said, to be fled from like something perverse and heretical.⁴²

This was the language of the Pope's Franciscan enemies.

Conclusion

Marsilius maintained overall coherence in expressing his thesis about where power was located in the political community. Certainly, a whole range of possible forms of polity were included in his model, ranging from monarchy, whether royal or imperial, to republics. Yet it was the application of that model to the question of the Church's, and in particular the papacy's, claims to power that was of decisive importance in his view. His theory of power, by revealing to him the proper structure of human beings' life in community, enabled him to prove, to his own satisfaction, that the pope and the Church had no autonomous power at all. It was a case of, 'The pope has no clothes', in this respect. If this were widely recognized, then the illegitimate power of the Church could disappear. By naming the cause of strife, Marsilius aimed to destroy it. By revealing the proper location and constructive use of power, he sought fatally to undermine the pope's destructive *plenitudo potestatis*. Only then would there be a chance of peace.

⁴² 'Separantur igitur rei scilicet usus simplex seu habere licitum ab omni iam dicto dominio, seu vendicandi et prohibendi rem aut eius aliquid potestate. Ex quo etiam per necessitatem sequitur manifeste, insanam heresim esse asserentis rem aut eius usum haberi non posse absque iam dicto dominio. Sic enim dicens nil aliud sentit quam Christi consilium adimpleri non posse, quod apertum mendacium est et, ut diximus, tamquam perversum et hereticum fugiendum': *DPb*, II. 13. 5–6.

THE SOVEREIGNTY OF THE MULTITUDE IN THE WORKS OF MARSILIUS OF PADUA, PETER OF AUVERGNE, AND SOME OTHER ARISTOTELIAN COMMENTATORS

Vasileios Syros

One of the most intriguing and controversial aspects of Aristotle's political philosophy is his doctrine of the sovereignty of the multitude. In the third book of the *Politics*, Aristotle states that the people at large rather than the few best should be sovereign, and he discusses this subject thoroughly. Since the *Politics* became accessible to the medieval West through William of Moerbeke's Latin translation (c. 1260), Aristotle's ideas served as a stimulus for further discussions on the function of the political community. As expected, one of the issues commentators focused on was the role of the multitude in the existence of a well-ordered political community. The purpose of this paper is to shed further light on the reception of Aristotle's views on the role of the multitude in late medieval political philosophy by presenting the ways in which some late medieval thinkers, such as Marsilius of Padua, Peter

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of Auvergne, and Nicolas de Vaudémont, elaborated on the Aristotelian theory of the sovereignty of the multitude.

For Aristotle each of the Many (*polloi* or *plēthos*) may not be of high quality if taken individually;¹ yet when they all come together, it is possible that they may surpass — collectively and as a body, although not individually — the quality of the few best, since each can bring his share of goodness and moral prudence. The Many display sufficient perception and can judge music and poetry better or in any event not worse than the few experts, by subjecting them to a multifaceted examination: while some appreciate one part, some another, collectively they do all of it. The same applies to all sorts of popular bodies and large masses of people. As Aristotle puts it, men have a natural instinct for what is true, and usually they do arrive at truth² and it is plausible to say that such ideas reflect the influence of Aristotle's principle of 'common sense'.³

According to Aristotle, Solon granted the 'most necessary' power to the *dēmos*, namely the rights to choose the magistrates and to audit them at the end of their tenure of office. A people that do not enjoy these elementary rights must be a people of slaves, and thus enemies to the government. But even in

¹ For literature concerning Aristotle's discussion of collective wisdom and the sovereignty of the *plēthos*, on which the present account is based, see: Egon Braun, 'Die Summierungstheorie des Aristoteles', *Jahreshefte des Österreichischen Archäologischen Institutes in Wien*, 43/44 (1959), 157–84 (repr. in *Schriften zu den Politika des Aristoteles*, ed. by Peter Steinmetz (Hildesheim/New York: Olms, 1973), pp. 396–423); idem, *Das III. Buch der aristotelischen 'Politik'. Interpretation* (Vienna: Boehlau, 1965); Antoine Léandri, 'L'aporie de la souveraineté', in *Aristote politique: études sur la Politique d'Aristote*, ed. by Pierre Aubenque and Alonso Tordesillas (Paris: Presses Universitaires de France, 1993), pp. 315–29; J. T. Bookman, 'The Wisdom of the Many: An Analysis of the Arguments of Books III and IV of Aristotle's *Politics*', *History of Political Thought*, 13 (1992), 1–12; Eckart Schütrumpf, *Die Analyse der Polis durch Aristoteles* (Amsterdam: Gruener, 1980).

² *Rhetoric*, 1355a15–7.

³ For a general evaluation of the significance of the principle of the *sensus communis* in Aristotle's philosophy, see Klaus Oehler, 'Der consensus omnium als Kriterium der Wahrheit in der antiken Philosophie und der Patristik. Eine Studie zur Geschichte des Begriffs der Allgemeinen Meinung', *Antike und Abendland*, 10 (1961), 103–29 (repr. in Klaus Oehler, *Antike Philosophie und byzantinisches Mittelalter. Aufsätze zur Geschichte des griechischen Denkens* (Munich: Beck, 1969), pp. 234–71). Consider also Hanns-Dieter Voigtländer, *Der Philosoph und die Vielen. Die Bedeutung des Gegensatzes der unphilosophischen Menge zu den Philosophen (und das Problem des Argumentum e consensu omnium) im philosophischen Denken der Griechen bis auf Aristoteles* (Wiesbaden: Steiner, 1980), especially the chapter 'Die πολλοί in der Politik', pp. 573–79.

giving these rights, Solon instituted a check by reserving the offices only for the notable and well-to-do.⁴ From Aristotle's viewpoint, the Solonian constitution is the prototype of a temperate and well-balanced constitution, with the Council of Areopagus standing for oligarchy, the method of electing the executive magistrates for aristocracy and the popular law-courts for democracy.⁵ In Aristotle's mind, the inexperienced Many can function as judges (*kritai*) who determine whether something did or did not happen, will or will not happen, is or is not the case.⁶

Aristotle praises Solon for bestowing much care upon placing on the authority of the *plēthos* limits that can ultimately function as a safeguard against abuse of power and the degeneration of the constitution. Aristotle maintains that the law is free from passions and thus a necessary guarantee against corruption into deviance.⁷ Whatever decisive importance Aristotle attributes to the principle of collective wisdom, he says clearly that its value is restricted to the election of the officers and their examination at the end of their tenure and he does not concede to the *plēthos* the power to legislate. In his critique of the function of classical democracy, Aristotle focuses on the conflict between the rule of *nomos*, conceived of as a law prescribing general rules, and the rule of the will of the assemblies of the citizens; the latter finds expression in popular decrees (*psēphismata*), which concern concrete situations.⁸ The law should, like a ruler, be sovereign in all matters.⁹ In Aristotle's eyes, this is one of the most fundamental prerequisites for the existence of a healthy constitution. For this reason, any constitution in which the highest authority rests on popular decrees and on not on the law (an apparent reference to the Athenian democracy) grows despotic. Once the people are sovereign on all matters, they turn into an autocrat, not as individuals, but collectively, and a blind prey to the influence of demagogues who become sovereign themselves.¹⁰

⁴ *Politics*, 1274a15–21.

⁵ *Politics*, 1273b35–1274a3.

⁶ *Rhetoric*, 1354b13–15.

⁷ *Politics*, 1286a17–20.

⁸ *Ethica Nicomachea*, 1147b32. In addition: *Ethica Nicomachea*, 1134b18–24; 1141b23–28.

⁹ *Ethica Nicomachea*, 1137b13–14.

¹⁰ *Politics*, 1292a18–37: 'Propter quod et mos idem, et ambo despotica meliorum, et sententiae sicut ibi praecepta, et demagogus et adulator eidem et proportionaliter. Et maxime autem utrique apud utrosque valent, adulatores quidem apud tyrannos, demagogi autem apud populos tales. Sunt autem hii causa, ut sententiae sint dominae, sed non leges, omnia reducentes ad populum.'

Aristotle mentions in this context two fundamental qualifications for the validity of this principle. In the first place, he suggests that virtue is not universally inherent in every *plēthos*. As he phrases it, it is not clear whether the collective superiority of the Many compared with the wise few can possibly exist in every democracy and every multitude.¹¹ Aristotle adds the qualification that the collective will be better than the experts when the populace is of not too slavish a character.¹² For him there is no doubt that in some (but not in most) peoples a clear distinction between the Many and the Few exists. Were this principle to be applied to every *plēthos* without discrimination, then it would apply also to masses of wild animals, since some peoples are beastlike.¹³

This paper will take a fresh look at a number of issues linked to the distinct lines of interpretation of the Aristotelian doctrine of the sovereignty of the multitude that were developed in late medieval political thought.¹⁴

Accidit enim ipsis fieri magnos propter populum quidem esse dominum omnium, opinionis autem populi hos. Suadetur enim multitudo hiis. Adhuc autem qui principatus accusant, aiunt populum oportere iudicare, hic autem gaudenter recipit advocationem. Quare dissolvuntur omnes principatus. Rationabiliter autem utique videbitur increpare, qui dicit talem esse democratiam non politiam. Ubi enim non principantur leges, non est politia. Oportet enim legem quidem principari omnium, de singularibus autem principatus et politiam iudicare. Quare siquidem est democratia una politiarum, manifestum, quod talis institutio, in qua sententiae omnia dispensant, neque democratia proprie. Nullam enim sententiam contingit esse universalem': cited according to *Aristotelis Politicorum libri octo: cum vetusta translatione Guilelmi de Moerbeka* / recens. Franciscus Susemihl. Accedunt variae lectiones Oeconomicorum (Leipzig, 1872). Cf. *Ethica Nicomachea*, 1152a19–23. On this see Martin Ostwald, *From Popular Sovereignty to the Sovereignty of Law: Law, Society, and Politics in Fifth-Century Athens* (Berkeley: University of California Press, 1986); Barry S. Strauss, 'Aristotle's Critique of Athenian Democracy', in *Essays on the Foundations of Aristotelian Political Science*, ed. Carnes Lord and David K. O'Connor (Berkeley: University of California Press, 1991), pp. 212–33 (esp. pp. 215ff.); David Cohen, 'The Rule of Law and Democratic Ideology in Classical Athens', in *Die athenische Demokratie im 4. Jahrhundert v. Chr. Vollendung oder Verfall einer Verfassungsform?* ed. by Walter Eder (Stuttgart: Steiner, 1995), pp. 227–44; A. R. W. Harrison, 'Aristotle's *Nicomachean Ethics*, Book V, and the Law of Athens', *Journal of Hellenic Studies*, 77 (1957), 42–7. On *psephismata* in general, see Mogens Hermann Hansen, 'Nomos and psephisma in Fourth-Century Athens', *Greek, Roman, and Byzantine Studies*, 19 (1978), 315–30 (repr. in Mogens Hermann Hansen, *The Athenian Ecclesia. A Collection of Articles 1983–1989* (Copenhagen: Museum Tusculanum Press, 1989), pp. 161–77), where a good sampling of literature is provided.

¹¹ *Politics*, 1281b18–22.

¹² *Politics*, 1282a14–17.

¹³ *Politics*, 1281b15–21.

¹⁴ For antecedents in Byzantine political thought, see Michael of Ephesus's commentary on the *Politics*, which has been preserved in the form of scholia in a Berlin manuscript of the

One of the Aristotelian commentators who dealt extensively with the role of the multitude in the government of the political community was Peter of Auvergne, whose ideas formed the basis for later discussions on this Aristotelian notion. Peter (1240s–1304), had a long career in arts and theology at Paris, teaching as a master of theology between 1296 and 1302.¹⁵ A prolific author, he was inspired by Thomas Aquinas, although he never entered the Dominican order, contrary to what is sometimes claimed. He produced various commentaries and questions on Aristotle's works and completed a number of Aquinas's treatises, among them his *Exposition on Aristotle's Books of Politics*.

Peter introduces in his *Commentary on the Politics* a distinction of cardinal importance between two types of multitudes, the bestial and the well ordered, which was later endorsed by several commentators of the *Politics* and played a significant role in subsequent discussions on the subject of the sovereignty of the multitude.¹⁶ In Peter's account, the main feature of the bestial multitude is its

Politics. Michael's discussion centres on the relations between the Many and the Few rich. From Michael's viewpoint, the Many would not embark on unjust actions toward the Few and Rich, if the sum total of them all is like a single good and just man. In this way, many men, when taken together, combine all the attributes and possess the whole sum of the virtue found in a good man or the best man. Thus, they would not act in an unjust fashion toward the rich by distributing the possessions of the latter among the poor. Michael's scholia are contained in *Aristotelis politica*, ed. by Otto Immisch, Bibliotheca scriptorum Graecorum et Romanorum Teubneriana (Leipzig 1909; repr. 1929); for the English translation of the passages and useful comments on them, see Ernest Barker, *Social and Political Thought in Byzantium, from Justinian I to the Last Palaeologus: Passages from Byzantine Writers and Documents* (Oxford: Clarendon Press, 1957), pp. 137–39. An interesting shift of emphasis in the use of the principle of the combined wisdom of the Many is found in Georgios Gemistos Plethon. Namely Gemistos argues for the necessity of the existence of a limited advisory council composed of trained and educated men as one of the pillars of the ideal monarchy. Such a council will provide the most competent advisers for the political community, since one man sees one side of the matter, another sees another and together they see all points of view and bring them together. Gemistos criticizes the mass of people for not paying heed to one another or understanding issues easily — partly because of their numbers, and partly because the greater part of them lacks education — and for giving their votes without prior rational reflection. See on this Barker, p. 208.

¹⁵ On the following, see James Blythe, *Ideal Government and the Mixed Constitution in the Middle Ages* (Princeton: Princeton University Press, 1992), pp. 76ff. Cf. *The Cambridge Translations of Medieval Philosophical Texts*, edited by Norman Kretzmann (Cambridge: Cambridge University Press, 1988–2002), II: *Ethics and Political Philosophy*, ed. by Arthur Stephen MacGrade (2001).

¹⁶ For an overview, Jean Dunbabin, 'The Reception and Interpretation of Aristotle's *Politics*', in *The Cambridge History of Later Medieval Philosophy: From the Rediscovery of Aristotle to the*

lack of reason — both individually and as a whole. Its members are born to live under despotic rule, and therefore should not have the right to occupy themselves with the affairs of the political community. Each member of the nonbestial multitude, on the other hand, inclines to virtue, and in this case the multitude as a whole has more prudence than a small group of good men and thus deserves a role in political life.¹⁷

Regarding Aristotle's scepticism toward the thesis that the people, if not degraded, can judge better corporately than a small number of good men, Peter arrives at the opinion that Aristotle's conclusion is not valid for all sorts of constitutions, especially not for monarchies, where people must confine themselves to obeying their moral superior and have no right to elect or punish the prince.¹⁸

In his discussion of the Aristotelian argument that the multitude should rule because of its greater collective virtue, Peter seizes upon the distinction between the two types of multitudes and stresses that a multitude made up of a few wise and prudent men and others, who although not wise, can be persuaded to accept reason, should rule, that is, should elect and punish the rulers.¹⁹ Peter rejects the rule of the bestial multitude, which is not the case with the well-persuadable one; this kind of multitude fulfils the two chief prerequisites for rule, namely proper knowledge of how it should be exercised and the power to repel its enemies, by contrast with the nonpersuadable multitude, that, albeit having potency, is hot-headed.²⁰

Peter also expatiates at length on this problem in his *Questions on the Politics*. There, he addresses the question whether the whole multitude or the few virtuous should rule. The few virtuous are, in Peter's view, able to discern the

Disintegration of Scholasticism, 1100–1600, ed. by Norman Kretzmann and others (Cambridge: Cambridge University Press, 1982), pp. 723–37. On Peter of Auvergne's political philosophy in general, cf. Lidia Lanza, 'Aspetti della ricezione della *Politica* aristotelica nel XIII secolo: Pietro di Alvernia', *Studi Medievali*, 35 (1994), 643–94, as well as Connor Martin, 'The Commentaries on the "Politics" of Aristotle in the Late Thirteenth and Early Fourteenth Century, with Reference to the Thought and Political Life of the Time' (unpublished doctoral thesis, University of Oxford, 1949). For a summary of Martin's results, see his article 'Some Medieval Commentaries on Aristotle's *Politics*', *History*, 36 (1951), 29–44.

¹⁷ Blythe, *Ideal Government*, p. 79.

¹⁸ Dunbabin, 726–27.

¹⁹ Dunbabin, 727.

²⁰ Dunbabin, 727.

good for the political community; hence, it is they who should rule, since it is good for the political community to be governed by those who serve best and foster assiduously the aim for which it exists, the life of virtue. One additional argument that Peter invokes in favour of the rule of the few virtuous is grounded on the assumption that the political community that stands most closely to the ideal one is better, so aristocracy is preferable to the rule of the multitude, because it approximates kingship more closely. The multitude on the other hand can exhibit a higher grade of prudence than the few good men and have the common good as the exclusive criterion for their actions. Besides, they meet the three main preconditions for rule: prudence, virtue, and power.²¹ However, this hardly means for Peter that the multitude should possess absolute authority: first, because the multitude has prudence and virtue only regarding its wise members, who perform a function analogous to that of the heart in a living organism. Second, because a condition for the rule of the multitude is its unanimity, its being in a position to govern as if it were a single man. This latter argument leads Peter to vindicate the supremacy of the rule of a single prudent and virtuous person who would receive the authority and necessary power for coercing rebellious subjects and repulsing adversaries upon his election by the multitude.²² The multitude should elect a prince due to its prudence and its power and it would obey more easily and willingly a ruler whom they themselves have chosen. They would also have the right to punish him in the case of delinquency, since punishment should always be inflicted by those whose action will cause the least resentment on the side the punished.²³

Similar speculations lie at the heart of the discussion of the right of the multitude to elect and correct the prince found in the *Questions* of Nicolas de Vaudémont on the *Politics*. Nicolas was a professor in the Faculty of Arts of the University of Paris in the second half of the fourteenth century and his *Questions*, which date from the middle of the same period, have been until recently erroneously attributed to John Buridan.²⁴ Nicolas follows Peter of Auvergne's

²¹ Peter of Auvergne, *Quaestiones super Politicum*, in MS Paris, BNF, lat. 16089, fols 295^{r-v} (cited here and in what follows according to Blythe, *Ideal Government*, pp. 80ff., and Dunbabin, 732–34).

²² *Quaestiones*, III, fols 295^{r-v}. Cf. Mario Grignaschi, 'Quelques remarques sur la conception du pouvoir législatif dans la scolastique', *Revue Belge de Philologie et d'Histoire*, 61 (1983), 783–801.

²³ *Quaestiones*, III, fols 295^{r-v}.

²⁴ (John Buridan), *Quaestiones super Octo Aristotelis Politicorum Libros* (Paris 1513; repr. Frankfurt a.M., 1969). On the question of the authorship of this work, see Christoph Flüeler,

doctrine in its general lines, though the whole tenor of his argumentation reflects a stronger preoccupation with the cohesion and unity of the political community, and the aspect of expediency finds a more pronounced expression than in Peter's discussion. Nicolas advocates the distinction between a bestial and a well-ordered multitude, but, unlike Peter, he divides the bestial multitude into the totally sensual, who cannot participate in reason, and the 'persuadibles', those who can be led to it.²⁵ He also brings an array of objections against the right of the multitude to elect and punish the ruler in case of an error. The multitude often lacks prudence, which is an essential requirement for electing the ruler and rules of expediency are not valid concerning important matters. Besides, as Nicolas voices it, conceding to the multitude the right to elect and punish rulers would automatically mean bestowing upon it a form of sovereignty that vile persons should not possess over their superiors, while election can give rise to strife and division.²⁶

According to Nicolas, the perfect prince should possess virtue, prudence, and power.²⁷ The body that is entrusted with his election should combine prudence and power in case it needs to coerce a good person to assume his duties. Lastly, Nicolas highlights the overriding importance of law for the maintenance of the political community and is consequently concerned with setting limits on the authority of the prince. Even though he does not attempt a vigorous defence of monarchy, he is in principle committed to the idea that regal rule is *idealiter* the best form of government.²⁸ He stresses that the true prince should function as an interpreter of the laws, and therefore have good knowledge of them and be liable to punishment or deposition, should he consciously scorn them.²⁹ On the other hand, being cognizant of the difficulties in realizing the ideal monarchy in the world in its present situation, Nicolas underscores the value of law even for all sorts regimes, the regal not excluded, although in this case the king can be entirely free from laws by reason of

Rezeption und Interpretation der aristotelischen Politica im späten Mittelalter, 2 vols (Amsterdam and Philadelphia: Grüner, 1992), I, 132ff. On the content of the commentary, Mario Grignaschi, 'Un commentaire nominaliste de la *Politique* d'Aristote: Jean Buridan', *Anciens Pays et Assemblées d'États*, 19 (1960), 123–42.

²⁵ *Quaestiones*, III, fols 33^v–34^r; 40^r. Cf. Dunbabin, pp. 735–37.

²⁶ *Quaestiones*, III, fol. 40^v.

²⁷ *Quaestiones*, III, fol. 40^r.

²⁸ *Quaestiones*, III, fol. 40^v.

²⁹ *Quaestiones*, III, fol. 40^r.

expediency.³⁰ Nicolas looks upon the best laws as the fruit of the collaboration between a king and a well-ordered or nonbestial multitude.³¹ The latter possesses prudence and is hence in a position to judge better in those cases not determined by the existing law.³² Moreover, it is actuated by love for the community, has numerical strength, and epitomizes the three main qualities that are necessary for electing the best prince.³³ Only under these conditions can election, Nicolas says, serve to guarantee the peace and inner harmony of the community, which can be preserved, if the multitude is vested with the right to inflict upon the prince a punishment whenever he deviates from rule according to the laws.³⁴

The problem of the sovereignty of the Many occupies a prominent place in Marsilius of Padua's *Defensor pacis* (1324). This work is not a typical commentary on Aristotle's *Politics*, and on a number of occasions its author takes great liberty in discussing Aristotle's opinions, which leads him to striking divergences from the ideas voiced in the *Politics*. One of the keys for explaining these differences is the fact that Marsilius, unlike the Aristotelian commentators, does not employ moral terms in discussing similar questions, as shown in his treatment of various questions, such as the definition of the common good and of the ultimate goal of the political community.³⁵

Concerning the evaluation of the multitude, Marsilius stands in diametrical opposition to the teaching of his close friend and alleged coauthor of the *Defensor pacis*, John of Jandun (1285/9–1328).³⁶ John adheres to the view of the

³⁰ *Quaestiones*, IV, fol. 52^r.

³¹ *Quaestiones*, IV, fols 58^v–59^r.

³² *Quaestiones*, III, fols 33^v–34^r.

³³ *Quaestiones*, III, fols 40^r–41^v.

³⁴ *Quaestiones*, III, fol. 40^r.

³⁵ Marsilius von Padua, *Defensor pacis*, *Fontes Iuris Germanici Antiqui*, ed. by Richard Scholz, 2 vols (Hannover: Hahn, 1932/33). Hereafter, citations of this text appear as *DPb*, along with discourse, chapter, and section number; all citations of the text refer to this edition. I have consulted Alan Gewirth's translation of the text (New York: Columbia University Press, 1956).

³⁶ The proponents of its coauthorship are Noël Valois, 'Jean de Jandun et Marsile de Padoue auteurs du *Defensor pacis*', *Histoire littéraire de France*, 33 (1906), pp. 528–623, and Ludwig Schmugge, *Johannes von Jandun (1285/89–1328): Untersuchungen zur Biographie und Sozialtheorie eines lateinischen Averroisten* (Stuttgart: Hiersemann, 1966), pp. 95ff. Against this assumption, see Alan Gewirth, 'John of Jandun and the *Defensor Pacis*', *Speculum* 23 (1948), 267–72, and Carlo Dolcini, 'Marsilio da Padova e Giovanni di Jandun', in *Storia della chiesa*, IX: *La crisi del Trecento e il papato avignonese (1274–1378)*, ed. by Diego Quaglioni (Cinisello Balsamo: San Paolo, 1994), pp. 435–46.

existence of a gulf between the philosophers and the unenlightened masses. He envisions the ideal ruler in a Platonic rather than Aristotelian manner; in accord with the antecedent tradition of Islamic political philosophy, he charges him with the task of making the citizens virtuous. The ruler has to provide for the common good by leading his subjects to the love and knowledge of God, the quintessence of the *felicitas politica*, endeavouring with the help of rhetoric to free them from burdens, directing them to the path of virtue and inciting them to preserve faith, obey him, and be ready to sacrifice their own lives for the sake of the common good.

John is at great pains to uphold the absolute primacy of the rule of the wise, and in this very aspect he again appears as a faithful follower of his Islamic predecessors such as Averroes.³⁷ In his *Questions on the Metaphysics*, John embarks upon a discussion of the 'orders' of mankind. At the pinnacle of the hierarchy he places those men contemplating the 'separate substances' and God, that is, the 'speculatives', the philosophers. Their function consists of leading the multitude to virtue through persuasion, namely rhetoric, since men in the multitude are prone to evil and are rude, gross, and undisciplined.³⁸ For this reason, all power inside the political community must reside with the philosophers.³⁹ These views find further elaboration in John's *Exposition on the Third Book of 'De Anima'*. John constructs in this treatise a four-layer scale of human hierarchy. The lowest group is made up of the ignorant common people and the peasantry, that is, those who only use their senses and imagination, or, if they use their other powers, they do it to such a small degree that it can be counted as nothing. The group next above the lowest are the mathematicians, who consider numbers, magnitudes, and

³⁷ On Averroes specifically, see Martin A. Bertman, 'Philosophical Elitism: the Example of Averroes', *Philosophical Journal*, 8 (1971), 115–21, and idem, 'Practical, Theoretical and Moral Superiority in Averroes', *International Studies in Philosophy*, 3 (1971), 47–54.

³⁸ On the following and for further references, see Alexander Murray, *Reason and Society in the Middle Ages* (Oxford: Clarendon Press, 1985), p. 268; Schmugge, pp. 68, 75, 100. See also Roberto Lambertini, 'Felicitas politica und *speculatio*: Die Idee der Philosophie in ihrem Verhältnis zur Politik nach Johannes von Jandun', in *Was ist Philosophie im Mittelalter?*, ed. by Jan A. Aertsen and Andreas Speer (Berlin/New York: de Gruyter, 1998), pp. 984–90; Edward P. Mahoney, 'John of Jandun and Agostino Nifo on human felicity', in *L'homme et son univers au moyen âge* (= Actes du 7. Congrès International de Philosophie Médiévale (30 août–4 septembre 1982)), ed. by Christian Wenin, 2 vols (Leuven-la-Neuve: Éditions de l'Institut supérieur de philosophie, 1986), I, 465–77.

³⁹ Murray, p. 268; Schmugge, p. 73.

soluble problems. Above the mathematicians stand those perfect and excellent in natural science.⁴⁰ The top group is that of the metaphysicians.⁴¹

For a proper assessment of Marsilius's conception of sovereignty, there is another major point which must be borne in mind: Aristotle's theory of the sovereignty of the multitude applies solely to the task of appointing and calling the ruler and the magistrates to account. Marsilius, on the other hand, extends the validity of this doctrine to legislation and assigns the assembly of the citizens a broader range of powers than Aristotle, who confined himself to granting the people only deliberative and judicial functions.

In his profile of the ideal lawgiver, Aristotle appears heavily indebted to the ancient Greek notion of the lawgiver as a legendary figure, endowed with wisdom.⁴² In the second book of the *Politics*, he offers a list of names of ancient Greek lawgivers, such as Solon. Aristotle ascribes to the lawgiver the task of setting the foundations for the formation of the political community, of determining the guidelines for its entire function, and of introducing a system of both written and unwritten laws.⁴³ Marsilius's discussion of the sovereignty of the multitude, on the other hand, centres on the problem of legislation, and Marsilius is explicit in his view that the only legitimate lawgiver, the primary and proper efficient cause of the law, is the *universitas* of the citizens or the weightier part (*valentior pars*) adequately representing it.⁴⁴

⁴⁰ See Murray, p. 269. Cf. Schmugge, p. 54.

⁴¹ Murray, p. 269.

⁴² *Politics*, 1283b36ff.; 1286a22. Cf. Michael Gagarin, *Early Greek Law* (Berkeley: University of California Press, 1986).

⁴³ *Politics*, 1273b26–74b26. Cf. *Politics*, 1266a39–bb8; 1266b9; 1327b36; 1332b9; *Ethica Nicomachea*, 1102a7–12. On this point see also Eberhard Ruschenbusch, 'Πάτριος πολιτεία: Theseus, Drakon, Solon und Kleisthenes in Publizistik und Geschichtsschreibung des 5. und 4. Jahrhunderts v. Chr.', *Historia*, 7 (1958), 398–424; John J. Keaney, 'Aristotle's *Politics* 2.12 1274a22b–a28', *American Journal of Ancient History*, 6 (1981), 97–100. Cf. also Claude Mossé, 'Comment s'élabore un mythe politique', *Solon, 'père fondateur' de la démocratie athénienne* *Annales*, 34 (1979), 425–37. ; Glenn R. Morrow, 'Plato and the Law of Nature', in *Essays in Political Theory: Presented to George H. Sabine*, ed. by Milton R. Konvitz and Arthur E. Murphy (Ithaca, NY: Cornell University Press, 1948), pp. 21–22.

⁴⁴ *DPb*, I. 12 .3. On the Marsilian theory of 'popular sovereignty', there is a large literature. I cite here only a few important works dealing with the subject: Friedrich von Bezold, 'Die Lehre von der Volkssouveränität während des Mittelalters', *Historische Zeitschrift*, 36 (1876), 313–67; cf. idem, 'Die Lehre von der Volkssouveränität im Mittelalter', in *Aus Mittelalter und Renaissance. Kulturgeschichtliche Studien* (Munich/Berlin: Oldenbourg, 1918), pp. 1–49. See also Otto von Gierke, *Die Staats- und Korporationslehre des Altertums und des Mittelalters und ihre Aufnahme in Deutschland*

Further, Marsilius refers only *en passant* to the limitations suggested by Aristotle and his medieval commentators on the validity of the doctrine of the sovereignty of the multitude. He says that if the multitude is not too vile, while each of its members will indeed be a worse judge than those who have knowledge, taken all together they will be better judges, or at least not worse.⁴⁵ Marsilius is apparently far from espousing the distinction between the bestial and nonbestial multitude, as presented by Peter of Auvergne and Nicolas de Vaudémont. In Marsilius's view, the majority of the citizens are as a rule neither vicious nor undiscerning; on the contrary they are of sound mind and reason and actuated by a right desire for the polity and things like laws and other statutes or customs that are needed for its viability.⁴⁶

(Berlin: Weidmann, 1881), III: *Das deutsche Genossenschaftsrecht*, pp. 603, 608, 615–16; Peter G. Kielmansegg, *Volkssouveränität. Eine Untersuchung der Bedingungen demokratischer Legitimität* (Stuttgart: Klett, 1977), pp. 59–65; Janet Coleman, 'Sovereignty and Power Relations in the Thought of Marsilius of Padua and William of Ockham: A Comparison', *Revista da Faculdade de Ciências Sociais e Humanas* (Lissabon), 17 (1994), 229–54. Further, see the studies by Walter Ullmann: 'Zur Entwicklung des Souveränitätsbegriffs im Spätmittelalter', in *Festschrift Nikolaus Grass zum 60. Geburtstag*, ed. by Louis Carlen and Fritz Steinegger, 2 vols (Innsbruck/Munich 1974), I, 9–27 (repr. in Walter Ullmann, *Scholarship and Politics in the Middle Ages: Collected Studies* (Variorum Reprints: London, 1978)); 'The Development of the Medieval Idea of Sovereignty', *English Historical Review*, 64 (1949), 1–33; 'Der Souveränitätsgedanke in den mittelalterlichen Krönungsordines', in *Festschrift Percy Ernst Schramm*, ed. by Peter Classen and Peter Scheibert, 2 vols (Wiesbaden: Steiner, 1964), I, 72–89 (repr. in Walter Ullmann, *The Church and the Law in the Earlier Middle Ages: Selected Essays* (London: Variorum Reprints, 1975)), as well as Francis Oakley, 'Legitimation by Consent: The Question of Medieval Roots', *Viator*, 14 (1983), 303–35; Gaines Post, 'Sovereignty and Its Limitations in the Middle Ages (1150–1350)', in *XIII^e International Congress of Historical Sciences, Moscow, 16–23 August 1970* (Moscow: Nauka, 1970).

⁴⁵ *DPb*, I. 13. 4.

⁴⁶ *DPb*, I. 13. 3. In Chapter 13 of the *Defensor pacis* Marsilius undertakes a thorough refutation of some basic objections to the thesis that the authority to make or establish laws belongs to the whole body of the citizens. One of the arguments he refers to consists of the assumption that the people or the whole body of citizens suffer from the sins of malice and ignorance. This argument is based on the statement in Ecclesiastes, 1.15, that 'the number of fools is infinite'. A political thinker who makes use of the same passage of the above-mentioned work is Ptolemy of Lucca who brings forward the view that regal government is more fruitful in corrupt nature, because it is necessary for human nature to be disposed in such a way to, as it were, restrain its flux within limits. By means of these speculations Ptolemy arrives at the conclusion that the rod of discipline, which everyone fears, and the rigor of justice are indispensable for the governance of the world, because they are the sole and efficient means for the better government of the people and the uneducated multitude; cf. Ptolemy of Lucca, *On*

Leaning on Aristotle, Marsilius notes that all men are animated by a natural impulse toward a sufficient life, which can be realized only inside a political community. Therefore, he regards the political community as the corollary of an inexorable natural necessity that the part of the political community that wishes the endurance of the polity must be weightier than the part that does not wish it.⁴⁷ In order to buttress this view, Marsilius resorts to the principle of the non-futility of natural desire: since all men have a natural desire for a sufficient life, this entails that they desire all the means for attaining it, otherwise such a desire would be futile.⁴⁸

Furthermore, Marsilius relies on Cicero in his description of the genesis of the first political communities.⁴⁹ All men not deformed or otherwise naturally impeded desire a sufficient life, and they avoid and flee what is harmful to it. Like all other species of animals they are endowed by nature with the capacity to preserve themselves by avoiding those things that seem harmful and seeking and obtaining all those things that are necessary for proper living.⁵⁰

In his account of the formation of the first communities, Marsilius starts from Stoic-Ciceronian premises. In his view, men come together in a political

the Government of Rulers, trans. by James M. Blythe (Philadelphia: University of Pennsylvania Press, 1997), p. 124.

⁴⁷ *DPb*, I. 13. 2.

⁴⁸ See also the discussion of this point by Gewirth in the appendix to Marsilius of Padua, *Defensor Pacis*, trans. by Alan Gewirth (New York: Columbia University Press, 1956), pp. 435–38.

⁴⁹ Cf. the fundamental studies by Cary J. Nederman: *Community and Consent: The Secular Political Theory of Marsiglio of Padua's Defensor Pacis* (Lanham, MD: Rowman & Littlefield, 1995), pp. 44–46; 'Nature, Sin, and the Origins of Society: The Ciceronian Tradition in Medieval Political Thought', *Journal of the History of Ideas*, 57 (1996), 3–26; 'Nature, Justice, and Duty in the *Defensor Pacis* Marsiglio of Padua's Ciceronian Impulse', *Political Thought*, 18 (1990), 615–37.

⁵⁰ *DPb*, I. 4. 2, with explicit reference to Cicero's *De officiis* I. 4. 11. On the Stoic doctrine of *oikeiosis*, see S. G. Pembroke, 'Oikeiōsis', *Problems in Stoicism*, ed. by Anthony N. Long (London: Athlone Press, 1971), pp. 114–49; Troels Engberg-Pedersen, *The Stoic Theory of Oikeiosis: Moral Development and Social Interaction in Early Stoic Philosophy* (Aarhus: Aarhus University Press, 1990). Cf. further, with rich bibliographical references, Robert Radice, '*Oikeiosis*': *Ricerche sul fondamento del pensiero stoico e sulla sua genesi* (Milan: Vita e pensiero, 2000). For a general overview of the dissemination of Stoic philosophy in the Latin Middle Ages, cf. for instance, Marcia L. Colish, *The Stoic Tradition from Antiquity to the Early Middle Ages*, 2 vols (Leiden: Brill, 1985), and Gérard Verbeke, *The Presence of Stoicism in Medieval Thought* (Washington, DC: Catholic University of America Press, 1983).

community in order to attain what is beneficial for a sufficient life, and to avoid the opposite. Hence, those matters that can affect the benefit and harm of all ought to be known and heard by all, so that all men may be able to attain the beneficial and avoid the opposite. Such matters are the laws, and in their being right consists a large part of the whole common sufficiency, while bad laws generate unbearable slavery, oppression, and misery of the citizens, which can occasion the destruction of the polity.⁵¹ The common utility of a law is better noted by the entire multitude; since no one knowingly harms himself, anyone can check whether a proposed law is designed to promote the private interests of one or a few persons more than those of the others or of the community, and can protest it.⁵² Such, however, would not be the case, were the law made by one or a few persons, who would take into account their own private benefit rather than that of the entire community.⁵³ Marsilius draws from this the conclusion that the multitude desires the means by which the political community can survive, and that is the law as the standard of the just and the beneficial, handed down by a command; otherwise, in most cases, there would occur deformity in nature and art.⁵⁴

Following Aristotle, Marsilius argues forcefully for the capacity of the majority of men to judge rightly the quality of a picture, a house, a ship, and other works of

⁵¹ *DPb*, I. 12. 7. See Ewart Lewis, 'The Positivism of Marsiglio of Padua', *Speculum*, 38 (1963), 541–83 (pp. 545–48, and 552–55). Cf. further Quentin Skinner, 'Political philosophy', in *The Cambridge History of Renaissance Philosophy*, ed. by Charles B. Schmitt, Quentin Skinner, and Eckhard Kessler (Cambridge: Cambridge University Press, 1988), pp. 389–452 (pp. 392–95), and James M. Blythe, 'Civic Humanism and Medieval Political Thought', in *Renaissance Civic Humanism: Reappraisals and Reflections*, ed. by James Hankins (Cambridge: Cambridge University Press, 2000), pp. 54–55. On the principle *Quod omnes tangit*, see Gaines Post, 'A Romano-Canonical Maxim, *Quod omnes tangit*' *Traditio*, 4 (1946), 197–251; Yves Congar, 'Quod omnes tangit, ab omnibus tractari et approbari debet', *Revue historique de droit français et étranger*, 36 (1958), 210–59; Antonio Marongiu, 'Quod omnes tangit: Principe fondamentale de la démocratie et du consentement au 14^e siècle', in *Album Helen Maud Cam*, 2 vols (Leuven: Publications Universitaires de Louvain, 1961), II, 101–15; idem, 'Il principio della democrazia e del consenso (*Quod omnes tangit, ab omnibus tractari et approbari debet*) nel XIV secolo', *Studia Gratiana*, 8 (1962), 555–75; Ralph E. Giesey, *Quod omnes tangit: A Post Scriptum*, in *Post scripta: Essays on Medieval Law and the Emergence of the European State in Honor of Gaines Post*, ed. by Joseph R. Strayer and Donald E. Queller, *Studia Gratiana/Institutum Gratianum*, Bononiae, 15 (Rome: Salesiano, 1972), pp. 319–32.

⁵² *DPb*, I. 12. 5.

⁵³ *DPb*, I. 12. 5.

⁵⁴ *DPb*, I. 13. 2.

art, even though they themselves would have been unable to discover or produce them.⁵⁵ This is also the case with the laws of the political community; although not every citizen nor the majority of the citizens are discoverers of laws, every citizen is nevertheless in a position to judge what has been discovered and proposed to him by someone else and to discern what must be added, subtracted, or modified.⁵⁶ Marsilius agrees with Aristotle that the best law is that which is made for the common benefit of the citizens and can only be achieved with the approval of the whole body of the citizens or the weightier part thereof, since that at which the entire body of the citizens aims intellectually and emotionally is more certainly judged as to its truth and more diligently noted as to its common utility.⁵⁷

The relationship between the multitude and the wise few assumes a different shape in Marsilius's political thought than in the work of Peter of Auvergne. First, prudence in itself does not entail undertaking the rule of the political community or its legislation. Also here the distinction between a multitude receptive to persuasion and one impervious to persuasion is absent. Marsilius has no objections concerning the ability of the wise few to discern what should be enacted with regard to practical matters better than the rest of the multitude; however this does not justify the conclusion that the wise can judge better than the entire multitude.⁵⁸

In order to substantiate these views, Marsilius resorts to Aristotle's principle that every whole or at least every corporeal whole is greater in mass and in virtue than any part of it taken separately.⁵⁹ The entire body of the citizens is in a position to examine the proposed laws both intellectually and emotionally and

⁵⁵ *DPb*, I. 13. 3.

⁵⁶ *DPb*, I. 13. 3.

⁵⁷ *DPb*, I. 12. 5.

⁵⁸ *DPb*, I. 13. 4.

⁵⁹ *DPb*, I. 12. 5. For a discussion on Marsilius's application of this principle, see Luigi Olivieri, 'Il tutto e la parte nel *Defensor pacis* di Marsilio da Padova', *Rivista critica di storia della filosofia*, 37 (1982), 65–74. Cf. Gillian R. Evans, 'The Use of Mathematical Method in Mediaeval Political Science: Dante's *Monarchia* and the *Defensor Pacis* of Marsilius of Padua', *Archives internationales d'histoire des sciences*, 32 (1982), 78–94 (esp. pp. 89–94). A similar use of the same principle is found in Remigio Girolami's 'De bono communi'. See in general Emilio Panella, 'Dal bene comune al ben del comune: I trattati politici di Remigio Girolami', *Memorie d'archivio*, 16 (1985), 1–198; for Remigio's political theory, cf. Charles T. Davis, 'An Early Florentine Political Theorist: Fra Remigio de' Girolami', *Proceedings of the American Philosophical Society*, 104 (1960), 662–76 (repr. in Charles T. Davis, *Dante's Italy and Other Essays* (Philadelphia, University of Pennsylvania Press, 1984)), as well as Maria C. de Matteis, *La 'teologia politica comunale' di Remigio de' Girolami* (Bologna: Patron, 1977).

a defect in the proposed law can better be diagnosed by a greater number than by any part thereof.⁶⁰ Thus, the whole multitude, in which the wise are included together with the less learned, can judge better than the minority of the wise. The multitude is justly dominant in the more important matters, to which of course legislation belongs.⁶¹ The people or the multitude, which is composed of all the groups of the political community or city taken together, is more ample than any part of it taken separately. Its judgement is more secure than that of any such part, whether that part be the common mass, such as the farmers, artisans, and others of that sort, or the judiciary, those officials who assist the ruler in his judicial functions, for instance advocates or lawyers and notaries, or even the honourable class, that is, the group of the best men, who are few and who alone are appropriately elected to the highest governmental offices.⁶²

A point that deserves attention in this context is Marsilius's rebuttal of an argument in favour of the rule of the few or one person which is based on the assumption that it is easier to harmonize the views of fewer persons than of many. Marsilius remarks that the few would never be able to discern or desire the common benefit as well as the entire multitude of the citizens. On the contrary, it would be precarious to entrust the making of law to the discretion of the few, since they would act in accordance with their private benefit, individually or as a group, rather than the common benefit, and in this fashion the way would be opened to oligarchy.⁶³ One man could make a bad law due to ignorance, malice, or both, aiming more at his own private interest than that of the community, so that the law could be tyrannical. For this reason, the authority to make laws should not belong to a few, for they too could sin in making the law for the benefit of a certain few and not for the common good, as is the case in oligarchies.⁶⁴

Moreover, Marsilius is concerned with the observance of the laws and the existence of coercive force (*potencia coactiva*) for their enactment. In his view, a law which each individual seems to have imposed upon himself is better observed by every citizen; such a law can only be the result of the deliberation and command of the entire multitude of the citizens. Marsilius here gives

⁶⁰ *DPb*, I. 12. 5.

⁶¹ *DPb*, I. 13. 4.

⁶² *DPb*, I. 13. 4.

⁶³ *DPb*, I. 13. 5.

⁶⁴ *DPb*, I. 12. 8.

freedom and despotism a new meaning, diverging in this way sharply from the classical and antecedent medieval tradition.⁶⁵ Significantly, he identifies freedom with having a share in the legislation.⁶⁶ Citizens would cease being free and would suffer another's despotism, that is, slavish dominion, if one or a few citizens by their own authority imposed the law over the whole body of the citizens and became despots.⁶⁷ Such a law, however good it may be, would be endured and followed only with reluctance, or not at all, and the citizens having suffered contempt⁶⁸ would protest against it; since they would not be called upon to make it, they would refrain from observing it.⁶⁹ At this point, Marsilius

⁶⁵ Cf. Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge: Cambridge University Press, 1978), I: *The Renaissance* (1978), pp. 53–66; Martin van Gelderen, 'The Machiavellian Moment and the Dutch Revolt', in *Machiavelli and Republicanism*, ed. by Gisela Bock, Quentin Skinner, and Maurizio Viroli (Cambridge: Cambridge University Press 1990), p. 220. For literature concerning the medieval concept of 'despotism' see, for example, Robert Koebner, 'Despot and Despotism: Vicissitudes of a Political Term', *Journal of the Warburg and Courtauld Institutes*, 14 (1951), 275–302; Sven Stelling-Michaud, 'Le mythe du despotisme oriental', *Schweizer Beiträge zur Allgemeinen Geschichte*, 18/19 (1960/1), 328–46. For a concise overview of the history of the concept through the Middle Ages, see Melvin Richter, s.v. 'Despotism', in *Dictionary of the History of Ideas*, ed. by Philip P. Wiener, 6 vols (New York: Scribner, 1973), II, and as well, Patricia Springborg, *Western Republicanism and the Oriental Prince* (Cambridge: Polity Press, 1992), pp. 284–85. Regarding Aristotle's notion of freedom, see e. g. Daniel H. Frank, 'Aristotle on Freedom in the *Politics*', *Prudentia*, 15 (1983), 109–16; Arno Baruzzi, 'Der Freie und der Sklave in Ethik und Politik des Aristoteles', *Philosophisches Jahrbuch*, 77 (1970), 15–28. On the ancient Greek concept of freedom, consult Olof Gigon, 'Der Begriff der Freiheit in der Antike', in *Die antike Philosophie als Maßstab und Realität, Festschrift zum 65. Geburtstag von Olof Gigon* (28. Januar 1977), ed. by Laila Straume-Zimmermann (Zurich/Munich: Artemis, 1977), pp. 96–161 (first publ. in *Gymnasium*, 80 (1973), 8–56), and Hans Joachim Krämer, 'Die Grundlegung des Freiheitsbegriffs in der Antike', in *Freiheit*, ed. by Josef Simon (Freiburg i.Br./Munich: Alber, 1977), pp. 239–70. Finally, on the medieval concept of freedom in general, cf. *La notion de liberté au Moyen Age Islam, Byzance, Occident*, ed. by George Makdisi (Paris: Les Belles Lettres, 1985); *Das Problem der Freiheit im europäischen Denken von der Antike bis zur Gegenwart*, ed. by Hans Freyer, Herbert Grundmann, Kurt von Raumer, and Hans Schäfer (Munich: Oldenbourg, 1958); Herbert Grundmann, 'Freiheit als religiöses, politisches und persönliches Postulat im Mittelalter', *Historische Zeitschrift*, 183 (1957), 23–53.

⁶⁶ *DPb*, I. 12. 6.

⁶⁷ *DPb*, I. 12. 6.

⁶⁸ It is noteworthy that Aristotle ranks contempt to the major causes of disturbance inside the political community (*Politics*, 1302b3). In general cf. Kostas Kalimtzis, *Aristotle on Political Enmity and Disease: An Inquiry into Stasis* (Albany: State University of New York Press, 2000).

⁶⁹ *DPb*, I. 12. 6.

touches upon Aristotle's discussion of the enforcement of the laws as one of the major principles of good government (*eunomia*).⁷⁰ This reveals the importance Marsilius attaches to the entire multitude of the citizens as the sole and ultimate source of coercive force inside the political community. He is willing to accept a less useful law made with the hearing or consent of the whole multitude and thus bound to be readily observed and endured by every citizen, because then each would seem to have set the law upon himself, and hence would have no protest against it, but would rather tolerate it with equanimity.⁷¹

True, Marsilius insists on the importance of prudence for the future ruler, just as Aristotle and his medieval commentators did. Nevertheless, the very fact that the ruler possesses prudence offers, in Marsilius's eyes, no justification of his absolute authority over his subjects. Marsilius champions a general scheme of governmental organization (and not a specific form of regime, though he expresses — and this only in passing — his predilection for kingship)⁷² under the constant control of the whole body of the citizens. For Marsilius, Aristotle's separation between lawgiver and government is not granted. He draws a firm line of demarcation between the two basic functions underlying the praxis of governance, namely the invention of the laws and their ratification through a united multitude which lacks technical knowledge, but is in a position to judge properly and accept or reject those that have been invented by the experts and proposed to them.

Although we cannot deal here properly with the question of the influence upon Marsilius's political theory by the political realities prevailing in his native Padua, it is worth noting that Marsilius's model of government exhibits many affinities with the constitutional organization of the Italian city-states.⁷³ Because

⁷⁰ Thus, one follows either the relatively best laws for a given people or the best ones in an absolute sense; see *Politics*, 1294a3–9. In the Latin translation of the *Politics*, *eunomia* is translated with 'bona legislatio' (1280b7, 1326a30, 1327a14–15) or 'bona legum dispositio' (1294a4). Marsilius uses the latter term. It is worth mentioning that Aristotle compares the city, which passes all the proper enactments and has good laws, but never keeps its laws, with an unrestrained man, whereas the political community which observes its laws but whose laws are bad resembles for Aristotle a bad man (*Ethica Nicomachea*, 1152a20–24). On the ancient Greek notion of *eunomia*, cf. in particular Martin Ostwald, *Nomos and the Beginnings of the Athenian Democracy* (Oxford: Clarendon Press, 1969), pp. 62–85, and Victor Ehrenberg, 'Eunomia', in idem, *Aspects of the Ancient World: Essays and Reviews* (Oxford: Blackwell, 1946), pp. 70–93.

⁷¹ *DPb*, I. 12. 6.

⁷² *DPb*, I. 9. 5.

⁷³ Cf. John K. Hyde, *Society and Politics in Medieval Italy: The Evolution of the Civil Life, 1000–1350* (London: Macmillan, 1973), pp. 189ff.; idem, *Padua in the Age of Dante* (Manchester:

of the increasing necessity for the expansion of the legal framework, the making of statutes and laws was entrusted to those persons who had the time and the necessary knowledge for preparing the drafts of the laws, which they presented to the citizens for approval.⁷⁴

A further point that still needs consideration is Marsilius's notion of 'collective wisdom' and the way this informs his confrontation with Aristotle's model of the lawgiver.⁷⁵ Marsilius's comparison between the prudence of a single person and that of a number of generations underlies his sharp though implicit critique of Aristotle's image of the ideal lawgiver, which reaches its climax in the conception of the 'legislator humanus'. Relying on Aristotle's theory of progress and seizing upon the *Nicomachean Ethics*, *Metaphysics*, and *On Sophistical Refutations*, Marsilius stresses that two persons or more than two, simultaneously and successively, are better able to judge and to understand than one man alone. The law resembles in Marsilius's view an eye composed of many

Manchester University Press, 1966), pp. 210ff., Leopold Stieglitz, *Die Staatstheorie des Marsilius von Padua, ein Beitrag zur Kenntnis der Staatslehre im Mittelalter* (Leipzig/Berlin: Teubner, 1914), pp. 21, 24, 31, 41, 43, 51; Charles W. Previté-Orton, 'Marsilius of Padua', *Proceedings of the British Academy*, 21 (1935), 149, 155–56.; Antonio Toscano, *Marsilio da Padova e Niccolò Machiavelli* (Ravenna: Longo, 1981), pp. 11ff; 39ff; 67ff; 81ff.; 97ff. For general surveys of the political organization of the Italian city-states which can serve as a proper point of departure for a comparative analysis of Padua's constitutional history, see especially Mario Ascheri, *Istituzioni medievali*, 2nd edn (Bologna: Il Mulino, 1999); Antonio Padoa Schioppa, *Il diritto nella storia d' Europa* (Milan: CEDAM, 1995), 1: *Il medioevo* (1995); Pietro Costa, *Iurisdiction. Semantica del potere politico nella pubblicistica medievale (1100–1433)* (Milan: A. Giuffrè, 1969). Cf. also the brief presentation in Quentin Skinner, 'The Italian City-Republics', in *Democracy: The Unfinished Journey, 508 BC to AD 1993*, ed. by John Dunn (Oxford: Oxford University Press, 1992), pp. 57–69.

⁷⁴ Daniel Waley, *The Italian City-Republics*, 3rd edn (London: Longman, 1988), pp. 75–76.

⁷⁵ Marsilius's argumentation presents striking analogies with that of the Jewish political thinker Don Isaac Abravanel (1437–1508) in favour of the rule of the Many. Abravanel invokes Aristotle's notion that the truth is more easily reached by the collaboration of many than by the exertions of one, as voiced in the *Metaphysics* (993a30ff.), and advocates a pattern of government relying on the rule of the majority (in a future study I plan to elaborate further on the affinities between these two thinkers). Cf. Ben Zion Netanyahu, *Don Isaac Abravanel: Statesman and Philosopher*, 5th edn (Ithaca, NY: Cornell University Press, 1998), and Leo Strauss, 'On Abravanel's Philosophical Tendency and Political Teaching', in *Isaac Abravanel: Six Lectures*, ed. by J. B. Trend and H. Loewe (Cambridge: Cambridge University Press, 1937), pp. 93–129.

eyes, that is, the considered comprehension of many comprehenders for avoiding error in civil judgements and for judging rightly.⁷⁶

The primary function of the laws consists, according to Marsilius, in determining well-nigh perfectly what is just or unjust, beneficial or harmful, with regard to each human act. Such a determination cannot be made by a single man, however intelligent he may be, since no single man, and perhaps not even all men of one era, are able to investigate or remember all the civil acts determined in the law. The law is in this sense the product of the collective wisdom of the Many when joined together. According to Marsilius, what was said about civil acts by the first investigators as well as by all men of the same era who observed them was meagre and imperfect, and has attained its perfection only subsequently, by virtue of the additions made by later investigators. Marsilius points out that what one man alone can discover or know by himself, both in the science of civil justice and benefit and in the other sciences, is little or nothing, and what is observed by the men of one era is quite imperfect by comparison with what is observed in many eras. At the root of this view is the

⁷⁶ *DPb*, I. II. 3. On the ancient Greek notion of progress, see, Eric R. Dodds, *The Ancient Concept of Progress and other Essays on Greek Literature and Belief* (Oxford: Clarendon Press, 1973); idem, 'Progress in Classical Antiquity', in *Dictionary of the History of Ideas* (see Richter, above), pp. 623ff.; Walter Burkert, 'Impact and Limits of the Idea of Progress in Antiquity', in *The Idea of Progress*, ed. by Arnold Burgen, Peter McLaughlin, and Jürgen Mittelstraß (Berlin/New York: de Gruyter, 1997), pp. 19–46 (on Aristotle, pp. 30–36); Ludwig Edelstein, *The Idea of Progress in Classical Antiquity* (Baltimore, MD: Johns Hopkins University Press, 1967), and idem, 'The Greco-Roman Concept of Scientific Progress', in *Proceedings of the Tenth International Congress of the History of Science*, ed. by Guerlac (Paris: Hermann, 1964), pp. 47ff. Valuable still is the older work by Woldemar Graf Uxkull-Gyllenband, *Griechische Kultur-Entstehungslehren* (Berlin: Simion, 1924). For a good overview of the history of the concept in Antiquity, see s.v., 'Erfinder', 'Fortschritt', in *Das Reallexikon für Antike und Christentum. Sachwörterbuch zur Auseinandersetzung des Christentums mit der antiken Welt*, ed. by Theodor Klauser (Stuttgart: Hiersemann, 1960), as well as Adolf Kleingünther, *ΠΡΩΤΟΣ ΕΥΡΕΤΗΣ: Untersuchungen zur Geschichte einer Fragestellung* (= *Philologus*, Supplementband, 26.1) (Leipzig: Dieterich, 1933). On the use of Aristotle's statements on invention, which are found in the *Metaphysics*, by scholastic philosophy, see Joachim Ritter, s.v., 'Fortschritt', in *Historisches Wörterbuch der Philosophie*, ed. by Joachim Ritter, Karlfried Gründer, and Rudolph Eisler, 12 vols (Basel: Schwabe, 1972), II, 1032–59 (pp. 1035–36.). On medieval views on progress in general, see Johannes Spörl, 'Das Alte und das Neue im Mittelalter: Studien zum Problem des mittelalterlichen Fortschritt-Bewußtseins', *Historisches Jahrbuch*, 50 (1930), 297–341, 498–524; Walter Freund, *Modernus und andere Zeitbegriffe des Mittelalters* (Cologne/Graz: Böhlau, 1957); Marie-Dominique Chenu, 'Antiqui, moderni', *Revue des sciences philosophiques et théologiques*, 17 (1928), 82–94, and idem, *La théologie au douzième siècle* (Paris: Vrin, 1957), pp. 386ff.

analogy between legislation and the arts and disciplines that are perfected by men's mutual help and the addition of later to earlier ones.⁷⁷

In contrast to Peter of Auvergne and the other Aristotelian commentators who follow Aristotle's ideas on the sovereignty of the Many, Marsilius attaches very little importance to the distinction between bestial and nonbestial/mixed multitudes. In his view, the majority of the people has an interest in the continuing existence of the political community, and so the people are able to decide responsibly on political matters. On the other hand, Peter of Auvergne defines virtue as the ultimate goal of a political community and deems the fact that the virtuous few promote the purpose for which the political community has been constituted a reason for their undertaking the rulership, since the aristocratic regime approximates the ideal one, kingship. Yet, a few virtuous men satisfy only two of the three main prerequisites for rule, and in light of this the Many can have a complementary function, since with their participation the third requirement would be given, namely the power coming from numbers. Peter contends that the prudence and virtue of the multitude exist in respect to the wise men among it, and he attributes a rather instrumental role to the Many. In this view he is followed by Nicolas de Vaudémont, who sees the multitude as the guarantee of numeric strength. Marsilius argues for the absolute sovereignty of the whole body of the citizens over all affairs concerning the political community. Of course, according to Marsilius the multitude contains a small number of prudent men, who have leisure, are older and experienced in practical affairs, and can devote themselves to the discovery of laws. However, the prudence that a group of prudent men displays is far inferior to the collective prudence of the multitude and inside the ideal political community, as portrayed by Marsilius, the whole body of the citizens is accorded absolute and supreme authority.

Another crucial difference between Marsilius, on the one hand, and Peter and Nicolas, on the other hand, consists in the very use of the principle that men love what they themselves have made. Peter and Nicolas adduce this argument in order to demonstrate that a multitude will more closely obey a ruler whom they themselves have elected, whereas for Marsilius the point at stake is not the obedience and loyalty to the prince, but the making of the laws and their observance by the citizens. As Marsilius puts it, only those laws are better observed that are made by the whole body of the citizens and that each one seems to have imposed upon himself. Furthermore, Peter acknowledges that the

⁷⁷ *DPb*, I. xi. 3.

right to resist belongs to those excelling in virtue, provided that they serve a just cause and have the power to rebel. Marsilius by contrast believes that the judgement, command, and execution of the correction of the ruler, according to his demerit or transgression, must be done only by the whole body of the citizens or by a person or persons appointed for this purpose by its authority.⁷⁸ Here he is close to the teaching of Nicolas de Vaudémont. In the latter's view, peace and concord are better served when the multitude has the right to punish the prince if he deviates from rule in conformity with the laws.

Marsilius's application of Aristotle's principle of the sovereignty of the multitude and his assessment of the role of the multitude in the government of the political community constitute a radical break with the political ideas of both Aristotle and his medieval commentators. Their proper examination can contribute to a more profound understanding of the basic tenets of his political philosophy and the way these relate to the main principles of the political theory of Aristotle and his medieval commentators.

⁷⁸ *DPb*, I. 18. 4.

HIERARCHY, AMBIGUITY, AND A *VIA MEDIA* IN MARSILIUS OF PADUA'S *DEFENSOR PACIS*

Gerson Moreno-Riaño

Recent interpretations of Marsilius of Padua's *Defensor pacis* have produced apparent divergent conclusions regarding the primacy of certain Marsilian political doctrines. On the one hand, Cary Nederman has forcefully argued that consent, for Marsilius, is 'the touchstone of good law and legitimate government'.¹ Contrary to this view, Joseph Canning has argued that the themes of power and coercion are central to Marsilius's political theory thus making arguments for consent secondary.² A more extreme position, Conal Condren's thesis of elliptical ambiguity, suggests that Marsilius carefully constructed a political theory 'that encourages and promotes a multiplicity of potentially incommensurable interpretations'.³ These interpretational strategies

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¹ Cary J. Nederman, *Community and Consent: The Secular Political Theory of Marsiglio of Padua's Defensor Pacis* (Lanham, MD: Rowman & Littlefield Publishers, 1995), p.77. Hereafter, citations of this text appear as CC.

² See Joseph Canning's contribution in this volume as well as his 'The Role of Power in the Political Thought of Marsilius of Padua', *History of Political Thought*, 20.1 (1999), 21–34.

³ Condren's thesis has been advanced in various places. See his *The Status and Appraisal of Classic Texts* (Princeton: Princeton University Press, 1985); 'Democracy and the *Defensor Pacis*:

categorize Marsilius either as a writer with a hierarchical political theory where certain arguments are primary or as a polemicist with no theory at all. The picture, though, is a bit more complex than these interpretational categories may suggest.

In what follows, I would like to examine a possible *via media*, or mediatory, interpretational strategy to arbitrate between the opposing interpretations of Marsilius's work as theoretically hierarchical or polemical and thus incommensurable. It is possible to suggest that Marsilius's argumentative strategy is not necessarily hierarchical in nature or incommensurable but rather decentralized so that Marsilius does not necessarily prize one doctrine over another or has no doctrines at all. Rather, he regards all his themes as equally important and related but emphasizes them at different times, for different reasons, and in different ways. The *via media* argument takes into account Condren's forceful argument of ambiguity but tames it to suggest that Marsilius's arguments are not infinitely malleable and polemical given the Paduan's explicit commitment to certain political doctrines. While they may appear ambiguous and extremely flexible, it is an apparent incommensurability due to Marsilius's decentralized theory. Likewise, the *via media* strategy gives due recognition to Marsilius's stress on consent, power, and other important themes but does not prize one over the other but rather sees them as equal partners in the *Defensor pacis*.

The strategy of this essay is to offer an exposition of the consent and power doctrines that emphasizes their existence, importance, and decentralized character within Marsilius's theory. I begin with an explanation of the decentralization thesis and then turn to an exploration of Marsilius's consent theory via his conceptualization of human rationality and the perfect community. I then turn to Marsilius's discussion of power and rulership as embodied in his analysis of poverty, *dominium*, and the offices of ruler and priest. The essay concludes with a brief speculation into the relationship between these apparently conflicting positions.

On the English Language Tradition of Marsilian Interpretation', *Il pensiero politico*, 8 (1980), 301–16; and 'Marsilius of Padua's Argument from Authority: A Survey of Its Significance in the *Defensor Pacis*', *Political Theory*, 5 (May 1977), 205–18. Nederman offers an excellent appraisal and critique of Condren's thesis; see *CC*, p. 19.

The Decentralization Thesis

In the entire text of *Defensor pacis* Marsilius clearly defends one aim as central to his entire theory — the destruction of priests' claim to *principatus* and also the alleged right of *plenitudo potestatis* by the papacy.⁴ Marsilius carefully designs the defence of this position and it is a mistake to suggest that either no such position exists or that no principled defence is possible due to the Paduan's polemical bent. It is just as problematic to argue that in the defence of this thesis, Marsilius employs a hierarchical argumentative strategy that gives preference to some themes and a secondary status to others. While there is substantial textual evidence that Marsilius rejects a variety of positions in favour of others (e.g., ecclesiastical subordination to dual sovereignty), there is absolutely no textual evidence that Marsilius prefers one of his accepted doctrines over others of his accepted doctrines simply on the basis of their 'centrality' to his argument.

Marsilius's strategy is to offer readers a multipronged defence of his antipapal position. If there is to be a central core to the *Defensor pacis* it is its attack on the Church's claim to rulership. But beyond that, every argument in the treatise is an equal participant within a highly developed and complex political theory. This is not to suggest that the entire theory is explicitly clear on every question and so thoroughly related as to render no part of it ambiguous. But each aspect of Marsilius's political theory is structurally dependent on the central aim of the work and does not depend on any other aspect of the theory for its existence or legitimacy. It is possible, as I suggest below, to speculate on the interconnection between theoretical prongs so as to clarify ambiguities. Yet speculate is all that

⁴ Latin references to the *Defensor pacis* are from Marsilius von Padua, *Defensor pacis*, ed. by Richard Scholz, *Fontes Iuris Germanici Antiqui*, 2 vols (Hannover: Hahnsche Buchhandlung, 1932/33). Hereafter, citations of this text appear as *DPb* along with discourse, chapter, and section number. English language quotations are taken from Marsilius of Padua, *Defensor pacis*, trans. by Alan Gewirth, with a new Afterword and Bibliography by Cary J. Nederman (New York: Columbia University Press, 2001). Hereafter, citations of this text appear as *DPc* along with discourse, chapter, and section number. See *DPb*, I. 1. 7: 'Est ergo propositum meum, auxiliante Deo, singularem hanc litis causam solummodo pandere. Nam earum que per Aristotelem assignate fuerunt, numerum atque naturam iterare foret abundans; huius vero quam nec Aristoteles conspiciere potuit'; and *DPb*, I. 19. 12: 'Hec itaque Romanorum quorundam episcoporum extimacio non recta et perversa fortassis affectio principatus, quem sibi deberi asserunt ex eisdem, ut dicunt, per Christum tradita plenitudine potestatis, causa est singularis illa, quam intranquillitatis seu discordie civitatis aut regni factivam diximus.'

we can and should do since Marsilius was content to present his central thesis and defend it in various self-contained and distinct ways, none of which are more essential than the others.

The Perfect Human Community: Enlightened Rationality, Law, and Consent

One of the clearest and most definable theoretical prongs in the *Defensor pacis* is Marsilius's entrenched belief in the power and ability of human reason to guide and better the human political condition.⁵ Marsilius holds reason to be an enlightened moral capacity raising human beings above beasts and mere self-interest.⁶ While Marsilius's notion of reason may indeed include temporal concerns of material well-being (simply consider Chapter 1 of Discourse I), these are not the complete embodiment of what it means to be a rational human being. Reason signifies the moral capacity to think of others above oneself and one's self-interest; it embraces the notions of civic duty, of human wisdom, of the pursuit of truth, of discourse and consideration.⁷ To the extent that self-interest is a part of these considerations, it is only secondary and never primary; it is bound up within one's consideration of the whole community, of others, of

⁵ Hereafter, I shall refer to the concept of human intellect, reason, intelligence, right reason, and correct reason as 'human reason' in general.

⁶ The interpretation of reason as a mechanism for regarding self-interest alone has been most recently advanced in Cary J. Nederman, 'Community and Self-Interest: Marsiglio of Padua on Civil Life and Private Advantage', *Review of Politics*, 65.4 (2003), 395–416. See as well Nederman's 'Society and Self-Interest: Marsiglio of Padua on Politics, Private Advantage, and the Profit Economy' presentation at the annual meeting of the American Political Science Association, Washington, DC, September 2000. For this and other related issues also refer to CC.

⁷ On some of these points see Takashi Shogimen, 'Marsilius of Padua and Ogyu Sorai: Community and Language in the Political Discourse in Late Medieval Europe and Tokugawa Japan', *Review of Politics*, 64.3, (summer, 2002), 497–524. Shogimen is right to point out that Marsilius's conceptualization of reason is Ciceronian. While Marsilius refers to Cicero's *De Officiis*, I. 22, it is clear that other elements of Cicero's notion of reason (e.g., *De Officiis*, I. 11–14) can be seen in various parts of the *Defensor pacis* (see below). I would also add that Marsilius's notion of reason as 'other-regarding' appears to have been influenced by Aristotle's treatment of the subject in regards to reason — as embodied in law — ruling for anything else would mean that men would behave in their own interests and become tyrants (e.g., *Ethica Nicomachea* 1134a35–1134b1).

truth, and of justice. Given this, how is it possible that human reason is used as a weapon against the papal claim of rulership? Simply stated, Marsilius's view of human reason as an enlightened human capacity is the foundation for his theory of consent, a theory that suggests citizens possess a great deal of political sophistication and knowledge.

There is considerable evidence within *Defensor pacis* for this substantive view of reason. Marsilius places a great deal of confidence in reason as a guide to the proper end of humans in civil society. Human reason is appealed to as the common link amongst human beings and as that which is productive of civic harmony and well-being. It is, according to Marsilius, the sure method by which to ground Discourse I of his work unless the minds of readers have been 'corrupted by nature, custom, or perverted emotion'.⁸ It is the means by which to acquire the functional equilibrium of the political community, viz. tranquillity.⁹ Reason is that which brings about the 'perfect community' and those 'things which are necessary for living and for living well'.¹⁰ It is the quality of human beings that allows them to complete their nature through creativity in the structuring of the civic body.¹¹ It is that which brings into existence the judicial or ruling apparatus of the political community 'to regulate matters of justice and the common benefit'.¹² And it is human reason that is tantamount to law — that which should always rule man and society — and which is the creator of human law itself.¹³ All of this is not to say, as some scholars have claimed, that Marsilius is set against divine law or the Christian faith.¹⁴ But it helps to explain Marsilius's claims that his proposal is one that 'every mind' can observe,¹⁵ that his principle of the desirability of a sufficient life is 'a principle naturally held, believed, and freely granted by all',¹⁶ and that he will only discuss

⁸ *DPc*, I. 1. 8.

⁹ *DPc*, I. 2. 3.

¹⁰ *DPc*, I. 3. 5.

¹¹ *DPc*, I. 5. 3.

¹² *DPc*, I. 5. 7.

¹³ *DPc*, I. 11. 3–4, I. 12. 1.

¹⁴ For a recent analysis of this claim and other related issues, see Maurizio Merlo, *Marsilio da Padova: Il pensiero della politica come grammatical del mutamento* (Milan: FrancoAngeli, 2003).

¹⁵ *DPc*, I. 1. 8.

¹⁶ *DPc*, I. 4. 2. This principle, argues Marsilius, is also 'clearly grasped' by everyone's senses.

the creation of those laws and governments ‘which emerge immediately from the decision of the human mind’.¹⁷ It is clear that Marsilius is a firm believer in the power of human reason to achieve civic virtue.

Nowhere is Marsilius’s confidence in human reason more evident than in his discussion of the necessity and creation of human law. In classic fashion, Marsilius states that the chief end of law is ‘civil justice and the common benefit’ and that law is necessary for the ‘complete rightness’ of civil judgements.¹⁸ Law is that which allows rulers or judges the possibility of making ‘good’ civil judgements with ‘right emotion’ and ‘true knowledge’ of the particulars concerned. Law keeps rulers from ‘perverted desire’ caused by the passions ensuring that civil judgements avoid partiality.¹⁹ The law safeguards rulers from erring on the basis of ignorance since it is the voice of prudence and the best of human experience.²⁰ Human law is that which determines ‘well-nigh perfectly what is just or unjust, beneficial or harmful, with regard to each human civil act’.²¹ And human law is nothing more than the utmost expression of human reason in political life, so much so that Marsilius, citing and commenting on Aristotle’s moral teachings, equates law to reason when he writes:

Hence [Aristotle] said in the *Ethics*, Book IV, Chapter 5, the treatise on justice: ‘We must not allow man to rule, but’ in accordance with ‘reason,’ that is, law [... and] in the *Politics* [...] Book III, Chapter 9, he said [...] ‘Hence the law is reason without desire,’ as if to say that the law is reason or knowledge without emotion.²²

Law, then, is necessary because it is rational and it thus offers the needed guidance by which to ensure that political communities be ‘ordered with entire rightness’.²³

Marsilius’s confidence in the power of human reason is also illustrated in his view which regards citizens as possessing a high degree of political sophistication and knowledge. He claims that any citizen can ‘discover the law taken materially and in its third sense, as the science of civil justice and benefit’ or the ‘true knowledge or discovery of the just and the beneficial’.²⁴ He admits, however,

¹⁷ *DPc*, I. 12. 1.

¹⁸ *DPc*, I. 11. 1.

¹⁹ *DPc*, I. 11. 2.

²⁰ *DPc*, I. 11. 3.

²¹ *DPc*, I. 11. 3.

²² *DPc*, I. 11. 4.

²³ *DPc*, I. 11. 8.

²⁴ *DPc*, I. 12. 2. Marsilius seems to temper this view in *DPc*, I. 13. 7.

that while this can be undertaken by any member of the community it is more suitable for men that ‘have leisure, who are older and experienced in practical affairs, and who are called “prudent men”’.²⁵ These *prudentes* are more suited for this task not because they are more rational or reasonable than the average citizen. Marsilius assigns this duty to them because they possess the ‘best and most acute minds’ and are therefore to be entrusted as ‘prudent and experienced [in] the investigation, discovery, and examination of the standards, the future laws or statutes, concerning civil justice and benefit’.²⁶ Intelligence, practical experience, moral character, and reasonableness are key traits that qualify the *prudentes* in assessing just standards and forming potential laws for the community. The rational citizenry is assigned a tremendously important role in this process — the approval of the laws themselves. Again, Marsilius demonstrates his unyielding trust in human reason to structure an optimal civic community. As mentioned earlier, not only are citizens able to discover the proper condition of law, they are also able to judge whether the substantive content of these proposed norms meet the proper condition of justice.²⁷ Marsilius’s citizens, or the *valentior pars*, are authorized to make human laws since only from them can the ‘best’ laws emanate, viz. those which realize the common benefit of all.²⁸ Such an event is possible due to the very fact that all or most citizens are reasonable and ‘of a sound mind and reason and have a right desire for the polity and for the things necessary for it to endure.’²⁹ Only the very few appear to have ‘a deformed nature, disagreeing with the common decision through singular malice or ignorance.’³⁰ The common benefit of any law is best judged by all of the citizens due to their quantity;³¹ their knowledge of what is beneficial;³² and their ability to enforce the law.³³

²⁵ *DPc*, I. 12. 2.

²⁶ *DPc*, I. 13. 8–9.

²⁷ ‘Proper condition’ entails law as coercive *and* just. Marsilius uses this concept in *DPc*, I. 10. 5.

²⁸ *DPc*, I. 12. 5.

²⁹ *DPc*, I. 12. 5, 13. 3.

³⁰ *DPc*, I. 12. 5.

³¹ *DPc*, I. 12. 5.

³² *DPc*, I. 12. 5, 8.

³³ *DPc*, I. 12. 8.

For Marsilius, all or most of the citizens of his community — including the important *prudentes* — are virtuous human beings who can be entrusted to ensure the longevity of this best-ruled state. Marsilius is well aware that many may disagree with his conclusions and devotes an entire chapter of Discourse I to answer his potential critics. The criticisms considered are what one would expect — they attack Marsilius's position as being overly idealistic and perhaps even naive. The authority to make or establish human law cannot belong to the whole body of citizens because they are 'vicious and undiscerning' or 'stupid'. And because they are as such, their views will be impossible to harmonize for the benefit of all.³⁴ In essence, only the few and virtuous can make law that is truly beneficial for all and therefore these are the only legitimate ones to be responsible for its creation. Marsilius's refutations stress, again, his entrenched commitment and confidence in human reason. It is not simply that Marsilius believes in a democratic impulse and consent as best governing a community because they place a limitation on arbitrary authority. This may be partly correct. But it is certain that he advances what may appear as a democratic impulse or a consent theory because it is the best means by which to allow members of the community to exercise their rational abilities and reasonableness and thus help to ensure the success and realization of the perfect community — one which is the culmination of a natural process and one in which all have a reason for its existence.³⁵ Marsilius's purpose is clearly to structure the perfect political regime, as he himself writes, the 'state governed according to virtue' or 'the state appropriately established according to reason'.³⁶ And Marsilius is confident that human reason, as expressed through the citizens' consent and creation and approval of law, is the proper means to accomplish this feat.³⁷

³⁴ *DPc*, I. 13. 1.

³⁵ *DPc*, I. 13. 2, 7–8.

³⁶ *DPc*, I. 13. 2, 15. 6. Marsilius writes the first quotation in reference to Aristotle's view that 'it is impossible for the best-ruled state not to be well-ordered by laws' (*Politics* 1293b 42).

³⁷ Marsilius's exploration into his enlightened rational consent theory is not finished. He continues by suggesting that just as citizens are able to create and approve the law of the community so too are they able to elect the ruler. Marsilius's argument is not as simple as it may appear. He argues that even as the citizens are able to judge the just character of law, they are suitable judges of the qualifications which a ruler ought to possess to utilize the law in a just fashion (*DPc*, I. 15. 3). Citizens have the moral capacity to create and approve truly just law and to elect truly virtuous rulers. The existence of such citizenry is difficult to imagine and it is amazing that Marsilius implies its reality. And more amazing still is Marsilius's claim that such a ruler exists — the 'perfect ruler' (*DPc*, I. 14. 2). This

Poverty and Political Power

Another theoretical prong in defence of Marsilius's central aim in the *Defensor pacis* is his delineation of a proper understanding of political power. There are several interrelated rubrics for understanding Marsilius's concept of power. One is his concern with Franciscan poverty dealt with at length in Discourse II of the *Defensor pacis*.³⁸ The other is his lengthy discussion regarding status of priest and status of ruler. Below, I demonstrate how various aspects of Marsilius's contribution to the discussion on *summa paupertas* and duties of offices reveal

individual is tantamount to a philosopher-king. He must possess 'prudence and moral virtue, especially justice', equity, and 'an outstanding love or benevolence for the polity' (*DPc*, I. 14. 2–7). Prudence, justice, moral virtue, equity, and love are to serve as guides for the ruler to ensure the rule of law (i.e., reason), to ensure proper judgements when the law may be silent (i.e., the rule of virtue), and to secure the prosperity and well-being of the community.

³⁸ Marsilius's treatment of the poverty question has received important treatment in the literature. For in-depth expositions and treatment of sources, see Georges de Lagarde, *La naissance de l'esprit laïque au déclin du moyen âge*, rev. edn (Leuven and Paris: Editions E. Nauwelaerts and Beatrice-Nauwelaerts, 1956–70), III: *Le Defensor pacis* (1970) (hereafter, citations of this text appear as *LNEL*); Jeannine Quillet, *La philosophie politique de Marsile de Padoue* (Paris: Vrin, 1970) (hereafter, citations of this text appear as *LPP*); Kerry E. Spiers, 'The Sources and Significance of the Concept of Ecclesiastical Poverty in the Writings of Marsilius of Padua' (unpublished doctoral dissertation, Tulane University, 1974); Kerry E. Spiers, 'The Ecclesiastical Poverty Theory of Marsilius of Padua: Sources and Significance', *Il pensiero politico*, 10 (1977), 3–21; Marino Damiani, 'Funzione e concetto della povertà evangelica in Marsilio da Padova', *Medioevo: Rivista di Storia della Filosofia Medievale*, 6 (1980), 411–30; Conal Condren, 'Marsilius of Padua and the Poverty of Traditionalism', *Il pensiero politico*, 11 (1978), 397–98; Kerry E. Spiers, 'In Reply to Professor Condren', *Il pensiero politico*, 11 (1978), 397–98; Conal Condren, 'Rhetoric, Historiography, and Political Theory: Some Aspects of the Poverty Controversy Reconsidered', *Journal of Religious History*, 15 (1984), 15–34; and Sharon Kaye, 'Against a Straussian Interpretation of Marsilius of Padua's Poverty Thesis', *History of Philosophy Quarterly*, 11 (1994), 269–79. For general expositions of Marsilius's poverty writings, see Felice Battaglia, *Marsilio da Padova e la Filosofia Politica del Medio Evo* (Florence: Felice le Monnier Editore, 1928); Carlo Pincin, *Marsilio* (Torino: Istituto de Scienze Politiche dell'Universita di Torino, 1964); Stephen F. Torraco, *Priests as Physicians of Souls in Marsilius of Padua's Defensor Pacis* (San Francisco: Mellen Research University Press, 1992). Other less in-depth though important treatments are Ephraim Emerton, *The Defensor Pacis of Marsiglio of Padua* (New York: Peter Smith, 1951); Alan Gewirth, *Marsilius of Padua and Medieval Political Philosophy* (New York: Columbia University Press, 1951); CC; and J. P. Gibbons, 'How a Liberal Picks a Fight: Marsilius of Padua and the Singular Cause of Strife', in *Educating the Prince: Essays in Honor of Harvey Mansfield*, ed. by Mark Blitz and William Kristol (Lanham: Rowman & Littlefield, 2000).

his understanding *inter alia* of the role of power and poverty in politics and, therefore, the appropriate sphere of the Church and clergy.³⁹

As mentioned earlier, the *Defensor pacis* aims to expose and remedy a cause of civil turmoil unknown to Aristotle, viz. the desire for rulership (*principatus*) by clergy and their claim of *plenitudo potestatis*. Along with his theory of rationality and consent, Marsilius also employs an exploration of status and poverty as tools of criticism. In Discourse I of the *Defensor*, Marsilius employs various quasi-Aristotelian arguments, relies on other ancient authorities, and cites biblical texts to demonstrate that the priesthood's essential role is to 'instruct and educate', in essence, to teach evangelical law and no more.⁴⁰ In Discourse II, Marsilius utilizes the discussion regarding poverty to establish the claim that the status of the priesthood presumes a lack of *dominium* and, therefore, a lack of coercive and jurisdictional authority.⁴¹ Of particular interest is the fact that throughout the *Defensor*, Marsilius bases his attack on the priesthood on the notion of *ius*, not on the notion of *dominium*. And in so far as this concerns the debate on *paupertas*, Marsilius's starting place is unusual and important.⁴²

³⁹ In the following exposition, I borrow extensively from Gerson Moreno-Riaño, 'Marsilius of Padua on Rulership', in *Monotheistic Kingship: The Medieval Variants*, ed. by Aziz Al-Ameh and János M. Bak (Budapest: Central European University, 2004), pp. 277–88.

⁴⁰ *DPc*, I. 6. 8.

⁴¹ I will take up Marsilius's exposition on the status of priests below as it relates to other facets of his argument. Marsilius addresses the question of religious poverty and its relation to *dominium* in the *Defensor minor* as well. In this smaller treatise, Marsilius reiterates his basic position from the *Defensor pacis* while focusing some of his comments on the issue of tithes and offerings. See *Defensor minor*, III. 4–8. The edition of the *Defensor minor* referred to is found in Marsile de Padoue, *Oeuvres mineures*, ed. by Colette Jeudy and Jeannine Quillet (Paris: Editions CNRS, 1979). This is a Latin-French edition. For an English translation see *Defensor minor and De translatione Imperii*, ed. by Cary J. Nederman, trans. by Cary J. Nederman and Fiona Watson (Cambridge: Cambridge University Press, 1993).

⁴² Tierney makes the same point regarding Marsilius's place in the history of rights theories. Tierney presents an excellent exegesis of the poverty chapters in the *Defensor* (Discourse II, Chapters 11–14) with a particular emphasis in their contribution to our understanding of Marsilius's theory of rights; see Brian Tierney 'Marsilius on Rights', *Journal of the History of Ideas*, 51 (1991), 3–17. Most treatments of Marsilius within the history of the poverty debate only stress his comments regarding *dominium*, *possessio*, and *usus* but do not note the importance of *ius* in his exposition. For example, refer to Janet Coleman, 'Medieval Discussions of Property: *Ratio* and *Dominium* According to John of Paris and Marsilius of Padua', *History of Political Thought*, 4.2 (1983), 209–28, and idem, 'Property and Poverty', in *The Cambridge History of*

Ius and Power

In order to resolve the dilemma of supreme poverty and the meaning and application of such terms as *dominium* (ownership), *possessio* (possession), *proprium* (private, of one's own), *commune* (common, of all), *dives* (wealthy, rich), and *pauper* (poor), Marsilius considers the meaning and delineation of *Ius* as essential and most basic to his undertaking since all of the contested terms in the poverty debate are clarified only when the meanings of *Ius* are elucidated. While it is important for scholars to examine *dominium* as an important concept in Marsilius's view of religious poverty, it is mistaken to grant this concept a fundamental role. For Marsilius, *dominium* is only one aspect of *Ius* and while *Ius* implied *dominium* it was not conversely so.⁴³ Marsilius distinguishes between two fundamental meanings of *Ius*:

First Sense: *Ius* is the coercive dictate of a legitimate ruler in the form of 'precepts, prohibitions, or permissions of acts,' acts which originate with the individual alone (I shall refer to this meaning as objective right).⁴⁴

Second Sense: *Ius* is the legal ability of an individual to follow his own will and act as he or she sees fit in regards to objects or things (I shall refer to this meaning as subjective right).⁴⁵

Medieval Political Thought, c. 350–c. 1450 (Cambridge: Cambridge University Press, 1997/1988), pp. 607–48. Other works considering the development of *dominium* in the later Middle Ages also omit the importance of *Ius* as Marsilius's starting place. See J. H. Burns, *Lordship, Kingship, and Empire: The Idea of Monarchy, 1400–1525* (Oxford: Clarendon Press, 1992), and Annabel S. Brett, *Liberty, Right and Nature* (Cambridge: Cambridge University Press, 1997). Burns does admit that his treatment of various ideas is somewhat attenuated.

⁴³ 'Ex hiis itaque apparere potest, quod non omnis rei temporalis aut eius usus potestas licita seu de iure primo aut secundo modo dicto vel utroque, sit dominium; quamvis e converso dominium omne licitum secundum iam dictos tres modos legales in rem vel eius usum aut utrumque sit potestas licita seu de iure iam dicto': *DPb*, II. 13. 10.

⁴⁴ *DPc*, II. 12. 3. I use the term objective right since Marsilius's definition evokes *Ius* as an objective regulation which does not originate within the individual. On this point see Tierney, 'Marsilius on Rights'. This definition of *Ius* employed by Marsilius is that given to law in *DPc*, I. 10. 4–7. Marsilius does distinguish a third and fourth sense but these are not important for our present purpose. See *DPc*, II. 12. 11–12.

⁴⁵ *DPc*, II. 12. 10. I use the term *subjective right* since Marsilius clearly uses *Ius* in this context to develop the idea that individuals are permitted various activities, within the framework of objective right, or that they have various powers which they can legally exercise in so far as they are permitted by objective right to do so. On this point see Tierney, 'Marsilius on Rights'.

In beginning with objective right, Marsilius makes it clear that all issues of *dominium* and *paupertas* are to be decided by human law and the human legislator, and not on the basis of *Ius naturale* or *Ius divina*.⁴⁶ The subjective rights of individuals exist only in so far as these are recognized or created by objective right.⁴⁷ Having concluded this, Marsilius then identifies *dominium* over things as a subjective right of human beings — the ‘principal power to lay claim to something’ in accordance with objective right.⁴⁸ *Dominium* of things — while being a right of the individual — is not an absolute right since it amounts to a permission of human law. The same is the case for private property (*proprium*) since Marsilius holds it to be tantamount to the subjective right of *dominium*.⁴⁹ For Marsilius, the only type of *dominium* that is inalienable from the individual is *dominium de humana voluntate seu libertate secundum se*.⁵⁰ This type of

⁴⁶ Marsilius rejects arguments of a natural law in both discourses. Specifically, as it relates to poverty, Marsilius does not recognize any such thing as a natural law to serve as standard for adjudicating the debate on *dominium*. See *DPc*, II. 12. 7–9. It is worthwhile to note that in *DPc*, II. 12, Marsilius overwhelmingly relies on secular philosophical and juridical sources for his defence of *ius* and *dominium* as these regard ecclesiastical poverty. It is only when he has concluded his analysis of these terms that he then turns to Scripture to buttress his findings.

⁴⁷ ‘*Ius* igitur dictum hoc modo secundo, nil aliud est quam volitum precepto vel prohibicione aut permissione activa legislatoris, quod quasi preceptum, prohibitum aut permissum passive pridem diximus’: *DPb*, II. 12. 10.

⁴⁸ ‘Quod quidem significant stricte sumptum potestatem principalem vendicandi rem aliquam quesitam iure dicto secundum primum modum [...] que siquidem *ius* alicuius dicitur, quoniam iuri primo modo dicto conformis’: *DPb*, II. 12. 13.

⁴⁹ ‘Nunc autem sequitur distinguere nomen *proprii* et *communis*. Dicitur autem *proprium* sive *proprietas* uno modo de dominio dicto secundum primam significacionem; quomodo utuntur ipso in sciencia civilium actuum’: *DPb*, II. 12. 21

⁵⁰ *DPb*, II. 12. 16. On the use of natural law and its relation to private property, see Brian Tierney, *Medieval Poor Law: A Sketch of Canonical Theory and Its Application in England* (Berkeley: University of California Press, 1959). Tierney argues that the usages of natural law were so varied in the Middle Ages as to cause confusion to readers and interpreters alike. Tierney suggests two dominant usages of the term which caused particular confusion at that time, namely, natural law as ‘the original [and] primitive condition of man, untouched by the sophisticated conventions of civilization’ or natural law as describing ‘the qualities appropriate in a creature of man’s peculiar nature, his intellectual and spiritual nature, that is’ with the first usage referring to the ‘origins of man’ and the second to ‘the destiny of man’ (pp. 30–31). Tierney suggests that only natural law in the second sense could furnish ‘an immutable moral code’ for medieval writers. It seems to be the case that Marsilius is thinking of *dominium de humana voluntate seu libertate secundum* in much the same manner as the second usage of natural law above.

dominium is the only kind of ownership that Marsilius is willing to recognize as 'natural' and not acquired through convention or the human will.⁵¹ *Dominium* over things — that is, private property — then is an individual right that exists only insofar as objective right is willing to recognize its existence. Consequently, the subjective right of *dominium* can be 'renounced' for any reason since it is a grant from the human legislator and is not essential to human nature or to the created order.⁵²

Holding *dominium* as a permission of law — and therefore subject to *Ius* (objective right or human law) serves Marsilius quite well. Only the human legislator and its lawful representative have any claim to *Ius*, the ground of *dominium*. Thus, the papal assertion of *dominium et plenitudo potestatis* is a legally unfounded and, therefore, politically nonexistent claim. Moreover, Marsilius offers legal and philosophical support to secular rulers' claims of *dominium* against the papacy, thereby enhancing Louis IV of Bavaria's challenges

⁵¹ 'Propter quod etiam dicitur homo inter animalium cetera suorum actuum habere dominium; quod siquidem a natura inest homini, non voluntarie seu electione quesitum': *DPb*, II. 12. 16. Marsilius's admission of the natural character of this type of *dominium* is significant, for he appears to be defending a sort of natural liberty of the individual as against the state. Marsilius is not willing to extend this same type of authority to the state in regards to *Ius* for, in *DPb*, II. 12. 7, he is unwilling to consider any such thing as *Ius naturale*.

⁵² 'Potest enim quilibet renunciare licite iuri pro se introducto secundum humanas leges, neque ad iuris beneficium compellitur quis invitus secundum legem aliquam': *DPb*, II. 12. 15. Marsilius's position of *dominium* as a subjective right subject to human law is quite similar to the Roman Law notion of *dominus proprietatis* where the possessor of a thing could use it and enjoy it within a contractual agreement between himself and the *dominus proprietatis* — the rightful owner of a thing. The rights of use and enjoyment were *dominium* rights taken from the *dominus proprietatis* and conferred upon the 'possessor'. In the *Defensor pacis*, the *dominium proprietatis* is the human legislator and the citizens are the possessors enjoying 'their' property at the behest or permission of the ruler. Marsilius's distinction also is reminiscent of the Glossators' discrimination between *dominium directum* and *dominium utile* granting feudal lords ultimate ownership and vassals a secondary type of ownership. Refer to R. Feenstra, 'Dominium and ius in re aliena: The Origins of a Civil Law Distinction', in *Legal Scholarship and Doctrines of Private Law, 13th–18th Centuries*, ed. by R. Feenstra (Aldershot: Variorum, Ashgate Publishing, 1996), pp. 111–22. By arguing that Marsilius's concept of *dominium* is not essential to human nature, I am trying to distinguish Marsilius's view from that attributed to John of Paris by Janet Coleman, 'Dominium in Thirteenth and Fourteenth-Century Political Thought and Its Seventeenth-Century Heirs: John of Paris and Locke', *Political Studies*, 33 (1985), 73–100.

against the pope. And Marsilius appears to side with the Franciscans in their bitter dispute against the papal claims of the impossibility of *simplex usus facti*.⁵³ Nevertheless, Marsilius's rejection of an objective right of *dominium* is a two-edged sword, for not only does it strip absolute *dominium* from the Church but it does the same for everyone in society. And, it should be noted, that while the remedy appears extreme (in comparison to John of Paris's solution in *De potestate regia et papale*) it is warranted given the fact that the business of the human legislator or its lawful representative is to maintain civil peace — and peace is the result of indivisible and total authority located in the political community, not the Church nor the individual.⁵⁴

Status and Power

Marsilius's doctrine of *Ius* is just one aspect of his theory of power grounding the totality of authority in the human legislator or its lawful representative. Another equally important feature of Marsilius's power doctrine is the concept of *status*. Marsilius's use of *status* appears throughout the *Defensor pacis* and *Defensor minor* with some of its more important implications discussed in Chapter 2, Section II, of the latter work. Marsilius's treatment of *status* appears to be heavily influenced by the Roman law understanding of the rights of *Quirites* and their possession of *locus standi* in accordance with the Law of Persons. *Status* was, therefore, a legal term denoting particular rights, privileges, and standing before a court of law.⁵⁵ Marsilius forcefully argues that a temporal *status* and an eternal

⁵³ Spiers argues that Marsilius's arguments ultimately prove to be of little help to the Franciscans (see Spiers, 'Sources and Significance', 'Ecclesiastical Poverty Theory', and 'In Reply'). This is especially the case since Marsilius locates *dominium* within the secular ruler not the pope. Marsilius's system would ultimately destroy the Franciscan structure but on account of different reasons in comparison to those of John XXII in his *Cum inter nonnullos*. On the relation between the Franciscans and Marsilius's writings, see *LNEL*, specifically Chapter 8, as well as *LPP*, specifically Chapters 16 and 17.

⁵⁴ On this and other related issues see Coleman's 'Dominium', 'Property and Poverty', and 'Medieval Discussions of Property'. Coleman argues that in comparing the concept of *dominium* in both John of Paris and Marsilius's works, it is clear that they both 'understood the theory and practice of contemporary property law' but that 'John was the more faithful to current practice and therefore, the more radical' ('Medieval Discussions of Property', p. 209).

⁵⁵ Roman Law recognized three types of *status* and termed these *capita*, viz. freedom, citizenship, and family membership. Loss of any one of these was *capitis deminutio* and, depending on which status was lost, could be *capitis deminutio maxima*, or *media*, or *minima*.

status do exist and clearly distinguishes these on the basis of the type of law which adjudicates claims within each.⁵⁶ While priests may have *locus standi* as spiritual subjects within *Lex divina*, they only have *locus standi* as political subjects within *Lex humana* — the codification of *Ius*. Both laws and statuses are mutually exclusive and any overlap is purely coincidental.

Marsilius distinguishes between legal statuses on the basis of human and divine law and the purposes of life within each *status*. In Discourse II of the *Defensor pacis*, he presents the reader a further extension of the notion of *status*, viz. status of ruler and status of bishop. Marsilius has already introduced this distinction in *Defensor pacis* I, Chapters 5–6. However, in Discourse II, he investigates these representatives of each *status* within the discussion of *summa paupertatis* in order to defend his claim that the function of the priesthood is to teach and also presumes a lack of *dominium* and ultimately of objective right (*Ius*). Before offering an exposition of the relationship between *status* and *paupertas*, it is important to digress — ever so briefly — into the related concepts of the temporal and the spiritual within the *Defensor pacis*.

Marsilius differentiates between the spiritual and the temporal by clarifying the different applications of each one. The temporal is that which incorporates all that ‘begins and ends in time.’⁵⁷ This category includes general purposive actions and other-related volitional acts that may beneficially or adversely affect their recipients. Further and more fitting, the temporal refers to things of the material world which are spatial and which have been given to human beings for their earthly use and enjoyment.⁵⁸ The spiritual realm, to the contrary, is an anti-image of the temporal, encompassing mental activity, phantasms, and immaterial substances.⁵⁹ The application of the term *spiritual* in which Marsilius

De Lagarde (*LNEL*) argues that while there are appearances of the Roman law tradition within the *Defensor*, they do not constitute Marsilius as a juridical expert.

⁵⁶ Refer to *DPc*, II. 8–9.

⁵⁷ *DPc*, II. 2. 4.

⁵⁸ ‘Quorum tamen nociore nobis incipientes dicamus, quod hec dicio *temporale* in una sui significacione famosiori dicitur de omnibus corporalibus naturalibus et artificialibus, aliis ab homine, que aliquo modo in ipsius potestate existencia, ad sui usum, indigenciam et voluptatem supplendam ordinantur in statu et pro statu vite mundane’: *DPb*, II. 2. 4. Marsilius excludes human beings from the list of ‘things’ in the material world.

⁵⁹ ‘Nunc autem dtinguere volo significata seu intencioniones huius dictionis *spirituale*, quod in una sui acceptione dicitur de omnibus incorporalibus substanciis et ipsarum accionibus. In alia vero significacione dicitur de omni accione aut passione humana virtutis sue cognoscentis aut appetentis immanente ipsi. Secundum quam etiam intencionem acciones quedam rerum

is most interested, though, relates to those things which bridge the metaphysical chasm between man and God: divine law, theological virtues, grace, and human activity 'done for the purpose of meriting a blessed life in the future world'.⁶⁰ This type of activity is in contradistinction to that which merits a blessed life in the present world. While temporal activity uses material things to fulfil needs and pleasures, spiritual activity repudiates the very pleasures these things bring, thus rejecting material commodities themselves. As Marsilius writes, spiritual activity embraces 'contempt for and flight from worldly and carnal delights' and has nothing to do with material things but everything to do with

the contemplation of God, love of God and of one's neighbours, abstinence, mercy, meekness, prayer, oblations for piety or divine worship, hospitality, pilgrimage, castigation of one's own body, scorn for and flight from worldly and carnal delights, and generally all similar actions and passions done for the aforesaid purpose.⁶¹

Marsilius thus allows for the possibility that human beings can choose to be either temporally happy or eternally rewarded but not necessarily both. Nowhere in the *Defensor pacis* does Marsilius provide for an ethical framework in which the two realities of temporal and spiritual are harmonized into one reality, one happiness, one end.⁶² The political aspect of this dilemma regards how the temporal and the spiritual realms are institutionalized in earthly life, that is, what is the relationship between political arrangements and religious institutions. Whereas Marsilius does not propose any sort of harmonization between temporal and spiritual ethics, he does effect an artificial harmony between the church and the state where both are in a sort of organic unity so long as the church remains subordinate to the authority of the state. Such fabricated compatibility is mandated by Marsilius's overall project, viz. providing a defence of political authority for the sake of civil peace.

corporalium in sensus animalium spirituales dici solent et sine materia, veluti rerum idola seu fantasmata et species, que anime sunt aliquo modo ratio cognoscendi; in quo genere reponuntur a quibusdam sensibilibus actiones, etiam in substantia non animata, ut luminum generationes et quorundam similium': *DPb*, II. 2. 5.

⁶⁰ *DPc*, II. 2. 5.

⁶¹ *DPc*, II. 2. 5.

⁶² The possible exceptions are Marsilius's comments on the function of divine law as the determiner of what is absolutely just in comparison to human law (e.g., *DPc*, II. 12. 8). However, his comments are too brief and are not developed either within his *Defensor pacis* or *Defensor minor*.

Understanding Marsilius's rigid distinction between temporal and spiritual realms is essential for insight into the relationship between material wealth, poverty, and the status of ruler. In Discourse II of the *Defensor pacis*, Marsilius argues that the function of material prosperity is not solely to facilitate the acquisition of happiness for the general populace. Its purpose is also to uphold the status and power of the political ruler. In order for the ruler to maintain his position of authority, it is necessary that he be both wealthy and majestic, rejecting out of political necessity the principles outlined in the Beatitudes.⁶³ Material things, then, are a necessary mean guaranteeing a ruler's political tenure. Marsilius's premise seems self-evident. After all, few, if any, rulers fail to amass material goods and wealth. However, Marsilius is not stating the obvious. Rather, he is using the relative superiority and attractiveness of the temporal and its benefits along with the political monopoly of *Ius* in a political — even pragmatic — manner to differentiate between the status of ruler and that of priest.

Marsilius continues his attack on the papal claim to secular authority by differentiating between the status of priest and of secular ruler. The two offices, he argues, are separate in terms of person and essence. In terms of person, none are meant to hold both offices simultaneously.⁶⁴ In regards to essence and proper activity, Marsilius begins by addressing the role and function of the priesthood and Church.⁶⁵ Here, he again bases his comments on the distinction of temporal and spiritual. Since both of these realms operate under different laws and moral ends, teachers are needed to instruct human beings regarding the demands of each kind of law. For the eternal law, priests were given the responsibility of 'teach[ing] and educat[ing] men in those things which, according to the evangelical law, it is necessary to believe, do, and omit in order to attain eternal salvation and avoid misery'.⁶⁶

Since the essence of the priesthood is to educate others about eternal matters, its actions were to be characterized by humility and contempt for temporal

⁶³ Marsilius's treatment of these themes is found in *DPc*, II. II.

⁶⁴ According to Marsilius, Christ set the example. See *DPb*, II. II. 2: 'Separavit autem Christus presbyterorum seu episcoporum officium ab eo quod principum, cum tamen potuisset ipse, si voluisset, statum principis et officium sacerdotis exercere, et apostolos idem facturos similiter ordinasse. Sed sic noluit.' Another similar passage is *DPb*, II. II. 7.

⁶⁵ The actual differentiation of the essence of each office takes place in Discourse I. In Discourse II, Marsilius assumes that his readers are aware of the distinctions.

⁶⁶ *DPc*, I. 5. 8.

goods. Lowliness and poverty, the trademarks of Christ, were to be the emblems by which priests identified themselves. Further, poverty and humility had to be features of a priest's life for him to be faithful to his functional calling. Hence, priests must reject political offices, carnal vanities, and human pleasures. The repudiation of material well-being in all its forms by priests, though, was not the case. For as Marsilius writes,

they [i.e., priests] have a burning desire for pleasures, vanities, temporal possessions, and secular rulership, and they pursue and attain these objectives with all their energies, not by rightful means, but by wrongdoing, hidden and open. And yet Christ and his true imitators the apostles spurned these things and taught other men to spurn them, especially if they are to preach before others the gospel of contempt for worldly things.⁶⁷

Rather than rejecting temporal goods, the priests of Marsilius's day discarded Christ and the status he had come to model. In doing so, the Church had come to value the status of secular ruler over that of humility and poverty.

While the essence of a priest's function is educational in nature, that of the ruler is regulatory. The ruler's task is to manage and control human behaviour for the sake of temporal happiness. He fosters civil peace and a prosperous life by the enforcement of laws. The function of legislator is to assist in the ordering of citizen's lives for the sake of earthly happiness. It has nothing to do with matters of eternal reward or punishment. Its main concern is earthly matters affecting the state and its members.

In as much as the ruler's function was to moderate the acts of his subjects, his earthly standing was not one akin to that of Christ. Whereas Christ lived the life of a humble political subject, the ruler was to live the life of a majestic and wealthy monarch. This is the same status which Christ rejected but which the ruler must embrace and for good reason: his function as *chef d'état* requires him to be materially prosperous. Several reasons are given by Marsilius supporting the material affluence of the ruler. The pervasive theme among all of these is that without material prestige the ruler cannot perform his duties to the civil community. Thus it is imperative for him to maintain a wealthy status, not that of a wayfarer.⁶⁸

⁶⁷ *DPc*, II. II. 6.

⁶⁸ On the notion of man being a wayfarer, see G. B. Ladner, 'Homo Viator: Mediaeval Ideas on Alienation and Order', *Speculum*, 42.2 (1967), 233–59. Ladner makes the point that medieval thought had derived from its Christian heritage two notions of alienation: estrangement from God and estrangement from the world. Toward the close of the Middle Ages, the notion of alienation had facilitated the rise, among other things, of representative

Marsilius carefully defends the elevated status of the ruler by outlining a threefold rationale.⁶⁹ First, the ruler must radiate an awe-inspiring image to his subjects, motivating both fear and respect among them. It is not that riches and nobility convince subjects of the ruler's superior moral status and thus their duty to obey. Rather, Marsilius seems to suggest that human beings are awed by mere external appearances of opulence and this awe translates into political reverence. Wealth facilitates the ruler's use of force against rebellious subjects, something that would be impossible if he followed in principle the life of a religious pilgrim. Riches buttress the authority and power of the monarch by appealing to the emotions of subjects and by giving the ruler the means necessary to punish civil disobedience.

Marsilius's final reason is complex, telling, and perhaps the most important. The status of poverty and humility — that modelled by Christ — is in complete opposition to the status and function of a political ruler. Marsilius develops this argument in two different ways. First, on account of the above, if a ruler were to command political subjects to obey the counsels of Christ and pursue a life of poverty and humility, none would believe the ruler's command, since his life would be otherwise. Marsilius here applies to the ruler the same logic that he has applied to priests: to live differently than one teaches others to live is no more than to live a lie. For a ruler to be true to his own life means his separation from the life of temporal detachment both in principle and in practice. Second, for a ruler to adopt the status of poverty is both to commit both an act of injustice against the state and political suicide. Embracing a lowly status would allow lawbreakers to go unpunished and to continue ravaging the state and its inhabitants. Furthermore, besides committing this political misdeed, by accepting the status of a devout follower of Christ the ruler causes loyal citizens to lose their trust in the state and in law itself. This would amount to the loss of legitimacy for the ruler, the end of his authority, and the breakdown of the civil community.⁷⁰

government. Interestingly enough, Marsilius's enthronement of the temporal vis-à-vis the spiritual may signal his rejection of *Homo viator* as a fundamental characteristic of human life. He seems willing to recognize its importance, in principle, for priests and devout Christians. But it is a mode of life which can be chosen by individuals and not one that is necessarily forced upon every one by the exigencies of divine order.

⁶⁹ These arguments appear in *DPc*, II. II. 7.

⁷⁰ We must not forget that Marsilius's discussion of the status of ruler and priest is situated within the larger debate on evangelical poverty. And Marsilius's use and understanding of poverty

A Foray into Speculation

There is very little doubt that Marsilius's strong stance on issues of rational consent and power are mere theoretical mirrors. Condren's thesis of incommensurability would be validated if one could not demonstrate the connectedness of the Paduan's theoretical prongs. But as seen above, at least in a minimal sense, all of Marsilius's theoretical initiatives are related via the centrality of rejecting all claims of papal rulership. This connection gives the political doctrines within the *Defensor pacis* a theoretical cohesiveness that cannot be easily dismissed. Such theoretical congruity also serves to unarm claims that Marsilius championed some political doctrines over others. All themes within the *Defensor pacis* are born equal and advanced equally since they are employed as self-contained units contingent only on the central aim of curing the 'disease' of papal assertions to rulership. No textual evidence exists for claims that some Marsilian doctrines are more central than others.

While both interpretation extremes of incommensurability and hierarchy can be rejected simply on textual evidence, one is still faced with the dilemma that the decentralization of Marsilius's theoretical initiatives leaves many questions unanswered and raises various theoretical tensions. The discussion of rationality, consent, the perfect community, and poverty and power highlight some of these quandaries. In particular, how is one to address the apparent incongruity between assertions of enlightened rationality and consent and political manipulation through wealth? On the one hand, Marsilius presents readers with a portrait of an enlightened citizenry that is extremely sophisticated but that can be easily impressed and even coerced. Further, Marsilius suggests the importance of a robust view of reason tantamount to virtue within law, the *prudentes*, the human legislator, and the ruler. But he also advances a citizenry that must be externally controlled at least via appearances since they seem to lack the virtuous inner disposition to be self-regulated. And within the discussion on *status*, there appears to be no harmony between laws, ends, and life choices, in other words, no ethical congruity. Can Marsilius be rescued from these damaging tensions?

It is possible for one to speculate on some probable solutions to these problems. And one's proposed solutions as well as interpretation of Marsilius's work should be guided by the suggestion that Marsilius is grappling with the

seems to be clearly informed by earlier medieval ideas of poverty that held *paupertas* to be not merely a state lacking in material wealth but a status that lacked *potentia*. *Paupertas* was the opposite of *dominus* and thus implied a lack of legal standing, of social merit, and significance.

ancient problem that has faced all of political philosophy: the integration of the ideal and the real, the implementation of principles in a world that is often unprincipled, the exigencies of political practice over and above those of political ideals. Marsilius's search for political order is a real-life struggle that goes beyond the mere written word and encounters difficulties within human life, impediments that are an intrinsic part of the human experience. Human beings at times have demonstrated all of the enlightenment Marsilius suggests and yet have consistently succumbed to illustrious bouts of moral and political turpitude. Politics have constructed constitutions and laws that are exemplary yet often have treated their rulers with a naiveté that is dumbfounding and have ignored the very laws they have engendered. This should not cause one to reject the Italian political theorist as irrelevant, merely polemical, or idealistic. Rather, it should emphasize a perspective that is sympathetic to his enterprise, to its realism; and one that elevates him to being one of the great political theorists of the Middle Ages.

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CONTRIBUTORS

Alexander Aichele, PD Dr, is Lehrbeauftragter in the Institut für Philosophie, Martin-Luther-Universität Halle-Wittenberg and Mitglied of the Laboratoire de Recherche en Histoire des Idées of the Université du Luxembourg. His basic research interests in systematic terms are metaphysics, epistemology, philosophy of law and political philosophy, and applied ethics; in historical terms: antiquity (Plato, Aristotle, Neoplatonism), medieval Aristotelianism, German enlightenment (Leibniz, Baumgarten, Kant), Nietzsche, Wittgenstein, and recent French and Anglo-Saxon philosophy.

Annabel S. Brett is Lecturer in Clare Hall, Oxford University. Her publications include *Liberty, Right, and Nature: Individual Rights in Later Scholastic Thought* (Cambridge University Press, 1998) and a translation of William of Ockham's *De Imperatorum et Pontificum Potestate* (Thoemmes Press, 1998). She is currently working on a new translation of Marsilius of Padua's *Defensor Pacis* for Cambridge University Press.

Floriano Jonas Cesar is an Honorary Research Fellow at the Wellcome Trust Centre for the History of Medicine at University College, London. His research interests include medieval political and ethical theories. He is currently studying the influence of medicine and philosophy in the political theories of the thirteenth and fourteenth centuries, especially in Marsilius of Padua's works.

Joseph Canning is Reader in History, University of Wales Bangor, Bangor. His publications include *The Political Thought of Baldus de Ubaldis* (Cambridge University Press, 1987) and *A History of Medieval Political Thought 300–1450* (Routledge, 1996). His research interests include the political thought of late

medieval jurists (civilians and canonists); Marsilius of Padua; and political ideas of Pope Innocent III. His current research is for a book entitled *Ideas of Power in the Late Middle Ages, c. 1290–c. 1420*, a study of the sources from the scholastic tradition in law, theology, and philosophy.

Frank Godthardt is a doctoral student at the Universität Hamburg and a graduate of the Archivschule in Marburg (School of Archival Studies in Marburg). His research interests are Marsilius von Padua und der Romzug Ludwigs des Bayern. Zum Verhältnis von politischer Theorie und politischem Handeln im späten Mittelalter (Marsilius of Padua and Ludwig the Bavarian's Roman Expedition. On the Relationship of Political Theory and Policy in the Late Middle Ages — dissertation project).

Gabrielle Gonzales is a doctoral student in the Church and State program of Baylor University (Texas). Her research interests include late medieval history with particular attention to the papacy and the Franciscan order.

Holly Hamilton-Bleakley is an independent scholar whose primary research interests are in late medieval and early modern moral and political philosophy, especially practical reasoning. Her various publications include articles on William of Ockham and Thomas Aquinas as well as book chapters and editorial introductions.

Bettina Koch is Assistant Professor of Political Science, Virginia Tech. Her research interests focus on the history of political thought, in particular medieval and early modern political theory, and comparative political theory, focusing on the comparison of Western and Middle Eastern political concepts. One further research interest is the influence of religion on politics and the interaction between the two. Koch is author of *Zur Dis-/Kontinuität mittelalterlichen politischen Denkens in der neuzeitlichen politischen Theorie: Marsilius von Padua, Johannes Althusius und Thomas Hobbes im Vergleich* (Duncker & Humblot, 2005). She has also published articles on late medieval and early modern political theory.

Gerson Moreno-Riaño is Chair, Department of Political Science, School of Undergraduate Studies, Regent University (Virginia), as well as Associate Professor of Political Science. Besides various book chapters and articles, he is the author of *Political Tolerance, Culture, and the Individual* (Edwin Mellen, 2002), co-editor of *Time and Eternity: The Medieval Discourse* (Brepols, 2003), and editor of

Tolerance in the 21st Century: Prospects and Challenges (Lexington Books, 2006). His research interests include political tolerance, democratic theory, natural law jurisprudence and ethics, and the history of political ideas with particular attention to late medieval and early modern political philosophy.

Cary J. Nederman is Professor in the Department of Political Science at Texas A&M University. Besides over eighty articles and book chapters, he is the author or editor of more than a dozen books, including: *English Political Thought in Early Fourteenth-Century England* (Medieval and Renaissance Texts and Studies, 2003); *Rhetoric and Renewal in the Latin West 1100–1540* (Brepols, 2003); *Worlds of Difference: European Discourses of Religious Toleration, c. 1100–c. 1550* (Penn State, 2000); *Talking Democracy: Historical Approaches to Rhetoric and Democratic Theory* (Penn State, 2004); and *John of Salisbury* (Medieval and Renaissance Texts and Studies, 2005).

Michael J. Sweeney is Associate Professor of Philosophy at Xavier University (Ohio). His general area of interest is the history of philosophy; his specialization is medieval philosophy. A Fulbright Scholar, Sweeney taught in Moscow, Russia (1998–99). His *Srednevekovaya Khristyanskaya Filosofiya* (Medieval Christian Philosophy) has been published by the Greco-Latin Press, Kabinet (Moscow), and his *Politicheskaya Filosofiya Srednikh Vekov* (Political Philosophy of the Middle Ages) has been published by the Thomas Aquinas Institute (Moscow).

Vasileios Syros is a Research Fellow of the Academy of Finland and teaches late medieval and early modern history at the University of Helsinki. He received his PhD in 2003 from the University of Heidelberg and his thesis under the title *Die Rezeption der aristotelischen politischen Philosophie bei Marsilius von Padua* will be published shortly by Brill Publishers. His research primarily concerns the late medieval and early modern political thought as well as the reception of classical political ideas in the Latin, Islamic, and Jewish traditions of the Middle Ages. He is currently engaged in an extended study of the history of Jewish political thought and Jewish–Christian relations in late medieval and early modern Venice.

Thomas Turley is Associate Professor of History and Chair of the History Department at Santa Clara University (California). Besides various published journal articles, he is working on a book-length manuscript entitled *Guido Terreni and the Crisis of Medieval Papalism*. His research interests include late medieval political thought, law, and theology.

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